JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS

Center for Families, Children & the Courts

Update

Working Together for Families and Children

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • AUGUST 2002 • VOLUME 3, NUMBER 2

Judge Len Edwards (center) receives a proclamation recognizing his election as president of the National Council of Family and Juvenile Court Judges from Chief Justice George (right) and William C. Vickrey.

Judge Leonard P. Edwards Honored

The Honorable Leonard P. Edwards was recently elected president of the National Council of Juvenile and Family Court Judges. The term is for one year. On July 19 Chief Justice Ronald M. George and William C. Vickrey, Administrative Director of the Courts, presented Judge Edwards with a proclamation recognizing his accomplishments and congratulating him on his new position.

Judge Edwards has been a judge in California for 21 years, having been appointed to the municipal court bench in 1981 and elevated to the superior

Continued on page 2

Conference to Focus on Juvenile Delinquency

Reprinted with permission from Court News, *July–August 2002*

This summer, the California court system is having a family reunion. The 2002 Juvenile Delinquency and the Courts Conference, scheduled for August 15–16 at the Radisson Hotel in Berkeley, will bring together the local juvenile justice teams that first formed at the 2001 conference.

BUILDING ON 2001 CONFERENCE

The 2001 Juvenile Delinquency and the Courts Conference convened juvenile bench officers, public defenders, district attorneys, probation officers, educators, mental health professionals, and service providers from 54 of the 58 California counties. They created local juvenile justice teams, and those teams devised action plans for improving their communities' systems for handling juvenile cases.

As a result of the 2001 conference, counties started new drug and mental health courts, increased drug treatment programs, put mentoring programs in place, and increased the numbers of group home graduates. In addition, team members became aware of the neglected needs of female juveniles, which led to increases in staff hiring and training.

CONFERENCE GOALS

This year's conference will provide each county team with the opportunity to meet as a group, attend educational workshops, and refine its action plan. The conference will focus on sharing both the successes of juvenile justice programs and the perspectives of youths who have been involved with the juvenile justice system.

Continued on page 2

IN THIS ISSUE

Editor's Note

WELCOME

to the August 2002 Issue of

Update

the Center for Families, Children & the Courts (CFCC) newsletter. The newsletter focuses on court and court-related issues involving children, youth, and families. We hope you find this issue informative and stimulating. As always, we wish to hear from you. Please feel free to contact CFCC about the events and issues that interest you.

We invite your queries, comments, articles, and news.

Direct correspondence to Beth Kassiola, Editor, at the e-mail address below.

Center for Families, Children & the Courts

Update

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PLEASE VISIT OUR WEB SITE AT

www.courtinfo.ca.gov/programs/cfcc

Judge Edwards Honored

Continued from page 1

court bench in 1984. Judge Edwards has been a member of the Judicial Council of California since 1999. He was the first chair of the Judicial Council's Family and Juvenile Law Advisory Committee and a member from 1989 to 1999. He is nationally and internationally recognized for his numerous contributions in the areas of juvenile, family, and domestic violence proceedings.

Judge Edwards has received many awards recognizing his significant and ongoing contributions in these areas, including the Bernard S. Jefferson Award for Leadership and Achievement in Judicial Education (1989); Livingston Hall Juvenile Justice Award, American Bar Association (1989); First Annual Commendation Award, Santa Clara County Justice System Advisory Board (1990); Judge of the Year, Santa Clara County Trial Lawyers Association (1990); Juvenile Court Judge of the Year, National Court Appointed Special Advocate Association (1992); Franklin N. Flaschner Award as the nation's most outstanding judge in a special and limited jurisdiction, American Bar Association (1996); and California Peace Prize, California Wellness Foundation (1997).

Juvenile Delinquency Conference

Continued from page 1

The theme of the conference, "Building a Better Future," is reflected in the educational workshops offered, which cover:

- Addiction and treatment—how to address substance abuse;
- Reintegration of youth into the community;
- Reducing crowding and disproportionate minority confinement in juvenile detention facilities;
- Blended funding to promote innovative programming;
- Working together—successful strategies for the collaboration of probation, education, and community-based organizations;
- Mentor programs for juvenile offenders;
- Truancy and tutoring programs;
- Indian justice issues;
- Juvenile sex offenders;
- The Foster Care Bill of Rights; and
- Legal and practical implications of Proposition 21.

Plenary speakers at the conference include Hon. Marvin R. Baxter, Associate Justice, Supreme Court of California; Mr. Ronald Earle, District Attorney, Travis County, Austin, Texas; Dr. Peter Leone, Professor, University of Maryland, and Project Director of the National Center on Education, Disability and Juvenile Justice; and Ms. Anne Seymour, a nationally recognized victims' advocate.

Dealing With Court Information in the Electronic Age

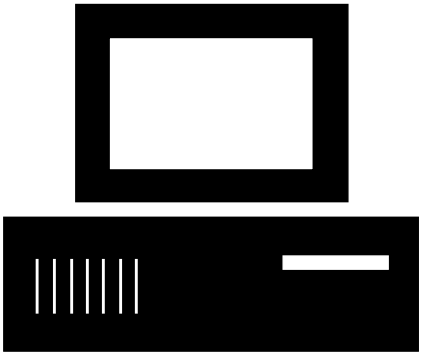
A NATIONAL EFFORT TO CREATE GUIDELINES FOR PROVIDING ACCESS TO COURT RECORDS

Martha Wade Steketee, Research Associate, National Center for State Courts, and Alan Carlson, President, Justice Management Institute

I. COURT RECORDS IN THE ELECTRONIC AGE: GENERAL ISSUES AND THE MODEL POLICY PROJECT

The nation's state courts utilize and store a vast array of records with information about many aspects of the individual lives of litigants and their children. In order to make these records available for the business of the court and to provide the records for those who traditionally have had access to them (from the public to media and data compiler/industry representatives), the courts must balance an array of interests: public access to court records, privacy and confidentiality of materials in court records, individual and public safety, and effective and efficient use of court resources. Three national partners with long histories of working with the nation's court systems are collaborating to assist state courts with the challenge of negotiating this balancing act: the National Center for State Courts (NCSC), the Justice Management Institute (JMI), and, as funder and supporter, the State Justice Institute (SJI).

NCSC and JMI have participated in two phases of a project called "Developing a Model Written Policy Governing Access to Court Records" on behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA). The goal of the project is to develop a model rule with commentary, along with supporting materials, that operates as a template for discussions involving state and local court systems, interested participants in court systems, and users of



court data as they develop their own policies that address privacy and access. The project's staff and advisory committee have developed an outline for state policy discussions that is now being referred to as *Public Access to Court Records: Guidelines for Policy Development by State Courts* (hereafter *Guidelines*).

The project's advisory committee has played a key role in the development, refinement, and ongoing adaptations to the *Guidelines*. It has met a total of six times in just over a year, and hosted a public hearing at which it received testimony from 12 individuals and organizations that submitted formal comments during the project's public comment period. The advisory committee itself was carefully constructed to reflect the range of interests invested in the protection of and access to the nation's court records. There were three representatives from CCJ, three from COSCA, one from the American Judges Association, two from the National Association of Court Management, one from the National Conference of Metropolitan Courts, one from media interests, two from privacy interests, one from the data industry (compilers and distributors of court data), and one from the law enforcement community. The committee meetings were open to media and other interests, and visitors—including newspaper editors, data industry representatives, and battered women's advocates—were welcome to engage in the committee's discussions.

The project's Web site, at *www.courtaccess.org/modelpolicy/*, was initially created to disseminate and solicit comments on a draft of the policy guidelines, and will continue to provide background information on the project, a summary and the full texts of comments received, and ongoing activities related to the project. A February 22, 2002, draft of the policy guidelines, then titled *A Model Policy*, was widely distributed via this Web site, e-mail attachments, and U.S. mail to appropriate court constituencies, media representatives, privacy advocates, and organized special interests, including advocates for battered women and other victims of crime. During a public comment period from February 15 through April 30, 2002, over 130 written comments on the draft policy were received.

At this writing, final comments and edits are being implemented in the *Guidelines*. The project staff is working closely with the Court Management Committee of CCJ and with COSCA to develop a strategy for endorsement and use of the model and for dissemination of the approach for use throughout the country's state courts.

Continued on page 4

Court Information in the Electronic Age

Continued from page 3

II. ELEMENTS OF THE PUBLIC ACCESS GUIDELINES

Premises. The draft *Guidelines* are based on the following premises:

1. The existing policy—that court records are generally open to public access—should be continued.
2. Authority to access records should not vary depending on whether the court record is in paper or electronic form. Access should be the same regardless of the form of the record, although the manner of access may vary.
3. The nature of the information in some court records is such that remote access to the information may be inappropriate, but access at the courthouse should continue.
4. The nature of the information in some records is such that public access to the information should be excluded unless authorized by a judge.

Interests. The *Guidelines* list 11 "interests" to be considered in determining a system of access to court records (Section 1.00): (1) accessibility of court records, (2) support for the role of the judiciary, (3) governmental accountability, (4) public safety, (5) minimal risk of injury to individuals, (6) individual privacy rights and interests, (7) proprietary business information, (8) minimizing reluctance to use the court to resolve disputes, (9) minimizing court staff time needed to provide access, (10) excellent customer service, and (11) avoidance of undue burdens on the ongoing business of the judiciary.

Who Has Access? The *Guidelines* state in several sections who should have access to court information—the public, media, other governmental agencies, and those who seek information from court records, regardless of the reason (Section 2.00). The *Guidelines* also recognize that existing statutes or rules may specify different rules of access for litigants and their lawyers, court employees, and some governmental employees (for example, law enforcement), and a local policy must accommodate these rules (Section 2.00(e)–(h)).

What Information Is Accessible? The *Guidelines* identify several types of information covered by the access rules—first in a discussion of the definition of "court record." The *Guidelines* specially address the traditional court record, including the documents and other information provided to the court to aid it in making its decisions (Section 3.10(a)(1) and (2)). Also, the *Guidelines* are intended to address records relating to the administration of the court as opposed to judicial decision making (Section 3.10(a)(3)). The *Guidelines* do not cover records unrelated to the court that the clerk may maintain (Section 3.10(b))—for example, land records—or information to which the court has access but that it does not use, such as information in an integrated criminal justice system.

Second, the *Guidelines* address the issue of the form of a court record. In keeping with the premise that there should be no distinction based on the form of information, the *Guidelines* provide for access regardless of the form (paper or electronic) or how the information is maintained or stored (Section 4.00).

Third, the *Guidelines* provide several levels of access. A vast portion of the record is accessible to the public without restriction, in keeping with existing law and historical practice (Section 4.10(a)). Moreover, when information is not accessible under the *Guidelines*, they provide that the *existence* of the restricted information is public (Section 4.10(b)). In many states there are a few circumstances in which part of the court record is available to the public for a limited time, then access to the record is restricted. The *Guidelines* allow for such provisions by permitting inspection of records at a court facility but not remotely (Section 4.20).

Fourth, the *Guidelines* address records for which a policy judgment has been made, generally by the Legislature, to exclude records from public access, arguing that the balance of interests is in favor of privacy or personal or public safety and against public access. In most states these determinations are made on a categorical basis by case type, by type of record, or by type of information. Examples based on case type include adoptions, juvenile cases, and mental health cases. The *Guidelines* (Section 4.30) identify the groups of such exclusions and specifically discuss, in commentary, types of information that jurisdictions ought to review carefully in their consideration of elements to exclude from public access.

Fifth, the *Guidelines* state that records that have traditionally been publicly accessible should continue to be made available and should even be published—in print or by other means—including court calendars, indexes of parties, and final judgments. The *Guidelines* contemplate that if this type of information is available in electronic form, the information that follows in court records should be made remotely accessible to the public unless it has been explicitly restricted following rulemaking under *Guidelines* Section 4.20, 4.30, or 4.60(a) (Section 4.70).

Finally, the *Guidelines* provide for processes through which courts or individuals can prohibit access to otherwise public information, and processes through which individuals obtain access to information to which access has been prohibited (Section 4.60). The court must decide whether there is a compelling interest in continuing to prohibit or restrict access according to applicable constitutional, statutory, and common law, and is directed to consider at least the following factors (a subset of the 11 interests listed under Section 1.00): minimal risk of injury to individuals, individual privacy rights and interests,

Continued on page 14

CASA Aggregate Report Published in July

Lee Ann Huang, Senior Analyst, Berkeley Policy Associates, and
Bronwen Macro, Analyst, Berkeley Policy Associates

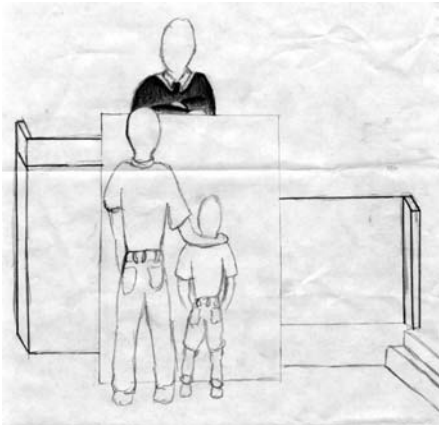
WHAT ARE CASAS?

The Court Appointed Special Advocates program was created to assist children who are subject to court proceedings due to abuse, neglect, or abandonment. Court Appointed Special Advocates (CASAs) are trained volunteers who are appointed by a bench officer to provide one-on-one advocacy for a child who is under the jurisdiction of the court. The CASA is responsible for conducting an independent investigation, helping the court understand the child's needs, ensuring that court-ordered services are being provided, and making recommendations to the court based on the best interest of the child.

First implemented in Washington state, CASA programs have been providing services to children in California for over 20 years. There are now 39 local CASA programs providing services in 40 of California's 58 counties. In 2000, over 4,000 CASA volunteers in California donated more than 409,000 hours to support nearly 7,100 children in the state's child welfare system.[1]

THE PACR PROJECT

In 1994 the Judicial Council adopted rule 1424 of the California Rules of Court, which serves as program guidelines for CASA programs. These guidelines implement the requirements of Welfare and Institutions Code section 100, which establishes a grant program administered by the Administrative Office of the Courts (AOC) to establish or expand CASA programs to assist children involved in juvenile dependency proceedings. The Legislature requires the Judicial Council to report on the implementation of the CASA grants program and to make recommendations on continuation and expansion of funding. The Peer Assessment and Compliance Review (PACR) project was developed in response to these reporting requirements.



This was drawn by a child in the system who had a CASA volunteer.

PACR is designed to strengthen and support local CASA programs and is divided into two components: (1) programs' self-assessment in regard to compliance with rule 1424, completed every three years by local CASA programs and submitted to the Judicial Council, and (2) a field study of local CASA programs by an independent evaluation team.

For the field study component, Berkeley Policy Associates (BPA), a California-based social policy research firm, was contracted to lead evaluation teams on site visits to 6 local CASA programs during Phase I and to 14 programs during Phase II. Each team included a BPA evaluation expert, the Judicial Council CASA grants analyst, a Judicial Council attorney, and a CASA program executive director from another county.

A PACR team visited each of the 20 programs between October 1999 and October 2001. During each visit, the team collected data from several categories of respondents, including the local CASA program staff; CASA volunteers; former foster youth; foster parents; CASA board members; dependency and delinquency bench officers, including the presiding juvenile judge; attorneys; county Child Protective Services (CPS) (or the local equivalent) supervisors and social workers; county probation officers; representatives from local school districts' special education programs; and other local program stakeholders. The PACR team used a variety of methods to collect data on site, including individual interviews, focus groups, and document review.

The PACR project is organized around six primary study objectives:

- Local CASA program accomplishments;
- Innovative strategies that are useful to other CASA programs;
- Areas requiring technical assistance;
- Capacity to track program-related outcomes;
- Appropriate outcome measures for future research; and
- Compliance with rule 1424.

The PACR team evaluated program sites according to these objectives and produced one report, separately bound

Continued on page 6

Editor's note: This article is an executive summary of a much more comprehensive aggregate report titled *Peer Assessment and Compliance Review (PACR) Aggregate Report for Court Appointed Special Advocates (CASA) Programs,* which describes the findings of 20 CASA site visits. The full report can be viewed and downloaded at *www.courtinfo.ca.gov/programs/cfcc/programs/description/casa.htm* or *www.bpacal.com*.

[1] Source: California CASA Association Web site, *www.californiacasa.org/*.

CASA Aggregate Report

Continued from page 5

in two distinct sections, for each program visited.

Any program found to be out of compliance with rule 1424 is required to submit a corrective action plan to the Judicial Council grants analyst. Additionally, the California CASA Association offers its assistance to any program attempting to develop and implement a corrective action plan.

PROGRAM ACCOMPLISHMENTS

CASA programs in California have accomplished a great deal since their inception more than 20 years ago. Often facing significant hurdles, CASA programs have given a voice to thousands of children in the dependency court system. California CASA programs have mobilized thousands of volunteers to advocate on behalf of children who are experiencing an intensely confusing and frightening time in their lives, in a system that may be impersonal, slow, and not forthcoming with the financial support needed for their adequate care. CASA programs have raised awareness, in the dependency system and in their communities, of children's unique needs and the services that will enable them to have the healthiest lives possible.

California CASA programs that were visited via the PACR project have accomplishments primarily in three areas:

- Services to children,
- CASA program infrastructure and support provided to volunteers, and
- Interaction and collaboration with the courts and other dependency system players.

SERVICES TO CHILDREN

Across the board, CASA programs in California are providing an invaluable service to children in the dependency system as well as in other court systems such as delinquency, family, and juvenile drug courts. Children often have unmet needs for services, either because court-ordered services are not routinely being provided or because the court is unaware of the child's needs. An advocate develops a relationship with each child, explains court proceedings, listens to the child's feelings about his or her circumstances, and spends more time with the child than does any other system partner. As a result of the information obtained through time spent with assigned children, advocates in programs visited for PACR are giving a voice to children by providing the court with detailed and child-focused information obtained through the independent investigation and time spent with the assigned child. Respondents report that this information helps to ensure that each child's needs are being met. In addition to advocating for the appropriate provision of services, respondents explain that as a result of a volunteer's investigation and consistent time spent with a child, the child's safety and well-being are increased.

PROGRAM INFRASTRUCTURE AND SUPPORT TO VOLUNTEERS

The CASA programs that hosted visits from PACR teams have made significant gains in developing program infrastructure, including systems for training, supervising, and supporting volunteers. Many individuals interviewed for PACR believe that the CASA program's initial training course in their county is of exceptionally high quality, provides a comprehensive overview of the issues, and adequately prepares volunteers for service. Respondents at several sites explain that an additional accomplishment of their local CASA program is providing consistent support and supervision to advocates, ensuring that they are providing the highest-quality services to children. Additionally, many CASA programs have active boards of directors, that provide substantial help with program governance, oversight of program finances, strategic planning, fundraising, and increasing public awareness.

INTERACTION AND COLLABORATION WITH THE COURT AND OTHER DEPENDENCY SYSTEM PLAYERS

CASA programs function in a system that includes a variety of other players: bench officers; social workers; attorneys for minors, parents, and CPS; foster and biological parents; siblings; relatives; and other personnel involved in a child's life, such as teachers, doctors, and therapists. Many of the programs visited for PACR have forged successful relationships with the various players in order to adequately represent children's best interest. CASA programs must maintain their independence, but many respondents report that developing cooperative relationships that facilitate information gathering and sharing is a significant accomplishment of the CASA program in their community.

INNOVATIVE STRATEGIES

California CASA programs have developed innovative strategies to serve children in their communities. At each of the programs visited thus far in the PACR project, the PACR team identified at least one, and usually many more, inventive approaches the CASA organization was taking to better meet the needs of the program, volunteers, children, the dependency system, and the community in general. Although CASA program activities are governed by rule 1424, each program is managed by an independent organization and has developed according to local conditions. As a result, there is considerable variation in the operational practices of CASA programs. Additionally, many programs face similar challenges but have developed different strategies for addressing them.

Many of the innovative practices developed by local CASA programs are in the areas of services to children, volunteer training, volunteer support, collaboration, program referrals, volunteer recruitment, volunteer screening, fundraising, and program evaluation.

Continued on page 7

CASA Aggregate Report
Continued from page 6

CHALLENGES AND TECHNICAL ASSISTANCE NEEDS

CASA programs are, in large part, functioning very well despite the many obstacles they face. However, each program visited for the PACR project is facing challenges. Some of the challenges are internal issues, and some stem from historical practices of the dependency court system in that county. In most instances, CASA programs are not having difficulties with any particular issue to the extent that it prevents the normal functioning of the program; the issues noted are simply those that many CASA programs are facing as they strive to reach their full potential.

COLLABORATION WITH DEPENDENCY SYSTEM PARTNERS

Several CASA programs are experiencing difficulties when they attempt to collaborate with various dependency system partners and work within established system mores. The CASA program is usually the newest system player, and respondents often report a great deal of initial resistance to the program. Many attorneys, social workers, and bench officers are unsure of the role a CASA is supposed to play in the dependency system and are therefore unclear about how CASAs will fit into the existing structures.

SUPERVISION OF VOLUNTEERS

Volunteer supervision is at the heart of the CASA concept. The programs were developed to utilize community volunteers rather than paid, professional staff to advocate on behalf of children. Yet, in some CASA programs, supervisory protocols are not in use, volunteers are inconsistently fulfilling their responsibilities regarding regular supervisory meetings, and there are too few supervisory staff members.

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TRAINING OF VOLUNTEERS

Overall, respondents report that the volunteer training offered to potential CASAs is of high quality and covers appropriate material. However, in every program visited, respondents made suggestions about topics that might be added to the initial training or to the continuing education opportunities. These topics include:

- Boundary issues,
- Communicating with biological and foster parents,
- Constraints facing CPS social workers (e.g., reunification, case timelines),
- Legal requirements in dependency cases, and
- Special education and Individualized Education Plans (IEPs).

BOARD OF DIRECTORS

Every CASA program that was visited has an official board of directors. Many of the boards are active and provide high levels of guidance, support, and oversight to their CASA programs. Yet, in more than a few programs, the board does not function as well as it needs to in order to provide adequate oversight and support to the executive director and the program overall. There are three areas in which boards appear to be struggling in the CASA programs visited for the PACR project: fiscal oversight, fundraising, and strategic planning.

RECRUITMENT OF VOLUNTEERS

Volunteers are difficult to recruit regardless of the organization that is recruiting. CASA programs ask individuals to donate a huge amount of time to a potentially emotionally draining experience, making it even more difficult to recruit volunteers. There are additional inherent challenges, such as asking volunteers to attend court hearings, which may be intimidating to many; requiring a large amount of training time, which prevents many working individuals and those with high levels of family responsibilities from participating; and asking them to work with vulnerable children who have experienced maltreatment, which is a very sensitive and difficult reality for many people. As a result of these challenges, CASA programs are having a difficult time recruiting volunteers, particularly members of ethnic minorities, men, and individuals both willing and able to work with children with special needs.

ACCESS TO LEGAL ADVICE

Rule 1424(g)(1)(E) recommends that each CASA program retain legal counsel or obtain pro bono attorney services for its volunteers. Yet, in some counties, volunteers and program staff members have periodically sought legal advice about a child's case from minors' attorneys, county counsel, or parents' attorneys in the system. Some counties have attorneys serving on their boards. Programs are encouraged to recruit independent legal counsel to prevent conflicts of interest with dependency participants and with board members.

ADDITIONAL FACTORS THAT AFFECT PROGRAM SUCCESS

Although the PACR teams analyzed the CASA programs according to the study objectives, they found that certain system or community factors, often beyond programs' control, also can affect programs' success.

Frequent Rotation of Presiding Judges. The Judicial Council recommends that every judge serve a minimum of two years as presiding juvenile judge. However, the recommended two-year term is not used in every county. Even in counties that do use such a rotation, two years is often an inadequate amount of time for judges to familiarize themselves with CASA programs and develop strong working relationships.

Continued on page 8

CASA Aggregate Report

Continued from page 7

Overburdened Dependency System. Dependency system partners universally suffer from high caseloads and minimal resources. Bench officers, attorneys, and social workers alike do not have the luxury of spending enough time focusing on the particulars of each dependent child's case. In fact, this is the reason CASAs are a vital partner in the dependency system. However, because their partners are often stretched too thin, CASA programs can be challenged in their attempts to build collaborative relationships.

Inadequate Program Funding. Like many nonprofit organizations, local CASA programs must often keep themselves afloat with minimal funds. For the most part, the local CASA programs that were visited focus the resources they have on serving as many children as they can. While this emphasis on service delivery remains true to the mission of local programs, it often means that there are few resources left to hire an adequate staff and engage in sophisticated outreach and recruitment efforts.

Partner Opposition to CASA Involvement. Most CASA programs are well respected within the dependency community. However, there are some instances in which system partners have strong, continued resistance to CASA involvement. CASAs' volunteer status and lack of formal training are common complaints from opponents of the programs. In addition, detractors often do not understand the formal role CASAs play in a dependent child's case.

CAPACITY TO TRACK PROGRAM DATA AND POSSIBLE OUTCOME MEASURES

In the current era of government accountability, it has become increasingly important for programs to document their effectiveness at meeting program goals. Measuring outcomes gives CASA programs an opportunity to identify the impact they are having on children and on the dependency system in general. This information may then be shared with the community as well as with current and potential funding sources, thereby increasing visibility and support for the program. Tracking program data also provides a chance to discover programmatic areas that are not having the desired effect so that changes can be made to increase effectiveness.

MEASURING OUTCOMES

Across the state, respondents universally agreed that it would be useful to survey or interview dependency system participants, such as bench officers, attorneys, foster parents, and especially the children involved, to obtain their feedback about the impact of the CASA program. Additionally, at several sites respondents suggested that any study undertaken should include a random assignment or comparison design—comparing outcomes for children with CASAs and those without—to more accurately determine the impact of having a CASA in a child's life. Furthermore, respondents across the state emphasized the need to conduct longitudinal studies, because they believe that so many of the effects of a CASA are not realized until the child reaches adolescence or even adulthood.

Respondents routinely mentioned two types of indicators to measure. One relates to the functioning of the CASA program and CASAs' activities on behalf of a child. The most commonly suggested indicators in this category were the number of CASA volunteers trained and assigned per child and the number and types of contacts between an advocate and his or her assigned child.

The second type of indicator mentioned by respondents was child-level outcomes. Individuals interviewed recommended tracking children's school performance (i.e., attendance, grades, scores on standardized tests, and graduation rates), children's mental-health functioning and emotional well-being, the number of dependency system placements, and the lengths of time children are in the system prior to a permanent placement.

CAPACITY TO TRACK PROGRAM-RELATED OUTCOMES

Only one of the CASA programs visited for PACR does not regularly utilize a computer database to track program data. The other 19 run either COMET (10 programs), CASA Manager (8 programs), or a database system created specifically for the CASA program (1 program). CASA programs normally track volunteer and child demographics; information on court hearings, placements, schools, and CPS social worker changes; number and type of volunteer hours; CASA assignments; and many other useful data. Many programs use the information tracked for monitoring their own activities and their progress toward goals, as well as for writing grants or supplying required information to funders or collaborating partners.

Although programs are tracking important program data, CASA staffs are universally ill equipped to fully utilize their database systems, so most have not received any formal training on either COMET or CASA Manager. An additional problem with data collection and reporting is that the database systems being used are difficult or impossible to customize to accurately reflect an individual program's information needs. Many CASA programs have specialized activities, and COMET and CASA Manager are ill equipped to store information unique to those activities. Furthermore, programs often have specialized reporting requirements for funders or collaborating partners, and would like to be able to generate standard reports for these purposes. The CASA staffs explain that neither type of database program is easily used to produce customized, automated reports.

COMPLIANCE WITH RULE 1424

Rule 1424 of the California Rules of Court contains over 100 compliance

Continued on page 9

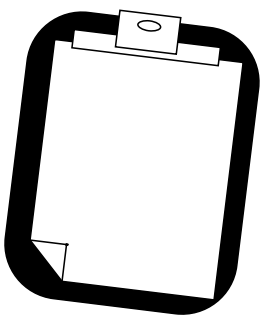
CASA Aggregate Report

Continued from page 8

requirements and recommendations. The CASA programs visited thus far were compliant in the vast majority of these. Yet the visitors to each of the programs noted a few areas of noncompliance, and many programs are struggling with the same issues. By far, the most common forms of noncompliance were a lack of annual CASA volunteer evaluations and the lack of a written recruitment plan focused on minority communities and volunteers able to work with children with special needs. Examples of other compliance issues (each one was found in fewer than five programs) are volunteers' participation in 10 hours of annual continuing education hours, written protocols for notifying case parties that a CASA has been assigned, and a written procedure for reviewing the grievances of CASA volunteers.

Lee Ann Huang is a senior analyst at Berkeley Policy Associates, a social policy research firm in Oakland. Lee Ann has a master's degree in public policy from the University of Chicago, with concentrations in child/family policy and social program evaluation. At BPA, she directs the PACR Project and is involved in several other evaluations of family resource programs, welfare reform efforts, and child care.

Bronwen Macro is an analyst at Berkeley Policy Associates. Ms. Macro holds a master's degree in public policy from the Gerald R. Ford School of Public Policy at the University of Michigan, with concentrations in economic and social policy. At BPA, she is an analyst for the PACR Project, directs an evaluation of the CASA-Attorney Collaboration pilot project, and is involved in several other evaluations of child welfare and workforce development programs.



Juvenile Hall Youth Learn From San Quentin Convicts

Hon. Katherine Feinstein, Superior Court of California, County of San Francisco

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SQUIRES (San Quentin Utilization of Inmate Resources, Experience and Studies) is a juvenile justice program that seeks to deter juvenile offenders from pursuing a lifestyle likely to result in their spending their lives behind bars. Often a sentencing judge wishes to impose a sanction upon a youth who is being placed on probation, but wants to ensure that the sanction carries with it some substantive meaning. Until we began our involvement with the convicts at San Quentin State Prison, such a sanction was not available.

The existence of the SQUIRES program was first brought to my attention by Jack Jacqua, co-founder of the Boys Club, and Marynella Woods, a social worker with the San Francisco Public Defender's Office. They sensed my frustration with garbage pick-up as the only available sanction for a youth's probationary order. Now that the San Francisco version of the SQUIRES program is up and running, both Jack and Marynella assist me in selecting youths for the program who have committed serious crimes but also show signs that they might be motivated to alter their futures.

As Jacqua tells youth who have been selected for SQUIRES, "You were not chosen because you're into thuggin'. You were chosen because some people think you got a good chance of making it through this thug thing on the streets. You've been chosen because people believe in you. This is an honor to be in this program."

The SQUIRES Program includes two mandatory visits to San Quentin, where our probationers tour the prison and meet one-on-one and in small groups with SQUIRES members. A 50-year-old prisoner confronts one of the court's 15-year-old delinquents: "Where you've got to feel good at is in your heart, not your head. You numb your life. That process will destroy you, but it will also destroy others. Right now you're a danger to you and society. If you want to love, you've got to be lovable, and the crap you're doing is not lovable."

Upon completion of the two Saturday trips to San Quentin, the youth meet with me in the courtroom to discuss their experiences and write to the SQUIRES members who touched them most. We attempt each month to gain the participation of community members working with youths in the youths' neighborhood to connect each youth with an appropriate community program. We encourage each young participant to utilize the services available through these community groups, as well as the Juvenile Probation Department, to assist them in successfully completing their probation. Services include job training and searching, individual and family counseling, health service support, and access to mentoring and tutoring. We attempt to encourage the youth to be proactive about their probation conditions and unmet needs and not set themselves up to fail. "Our idea is that the experience is like an extended family rather than a 'program,'" says Woods. "We deal with them in crisis but also in normal times when they feel safe. I'm interested in whether the kid is really feeling 'OK,' rather than in some behavior he's just exhibited."

Continued on page 10

SQUIRES

Continued from page 9

Ninety-eight young men were court-ordered to participate in the San Francisco SQUIRES program in its first nine months, and 69 successfully completed the four-session program. These are good odds, but a single program does not work without a wide range of court and community support. "There is no one-shot thing," Jacqua notes. "SQUIRES is another piece for them to get their footing on the ground. It has a different impact on different people. SQUIRES has been a big catalyst for a number of our kids."

Judge Katherine Feinstein currently serves as San Francisco County's juvenile delinquency judge. Judge Feinstein is a member of the Judicial Council's Family and Juvenile Law Advisory Committee. Prior to assuming this position, Judge Feinstein served as counsel to the San Francisco Department of Human Services, overseeing the case management and litigation of approximately 3,000 juvenile dependency cases. Her past experience includes service as a deputy district attorney, membership on the San Francisco Police Commission, and the directorship of the Mayor's Criminal Justice Council.

Effective Use of Facilitators in the Courtroom

Commissioner Sue Alexander, Superior Court of California, County of Alameda, and Tom Suhr, Family Law Facilitator, Superior Court of California, County of Alameda

Increasingly, family law courtrooms are becoming the domain of self-represented parties.

Family law facilitators have flexible roles and functions within the statutory and funding guidelines, and therefore their services may include courtroom assistance to the court and to litigants. By directly assisting the judicial officer, a facilitator can help the court work more efficiently and effectively in self-represented cases.

By statute, the facilitator must be an experienced family law practitioner, and this legal resource should be used to its best advantage. Efficient use of facilitator resources includes careful calendar coordination, maintaining a steady flow of cases during the calendar, and using the facilitator to coordinate the inevitable follow-up tasks that reduce needless continuances and other wastes of judicial time.

Following are some of the principles that have proven effective in making the best use of this legal resource in the courtroom.

- **Coordination with the filing clerks and the courtroom clerk** to ensure that cases in which both parties are unrepresented are set for hearing on the same day of the week. This creation of special "pro per" calendars makes the best use of facilitator resources, which usually are too limited to permit a facilitator to be present at all short cause calendars throughout the week.[1] Pro per calendaring requires monitoring to make sure that the difference in waiting time for hearings between attorney cases and pro per cases does not become too great. As the volume of pro per cases grows, there is a tendency for the pro pers to get later and later hearing dates, creating an undesirable discrepancy in court services.
- **Review of case files** in advance of the hearing to identify which cases can be referred to the facilitator at the beginning of the calendar, such as cases with no proof of service in the file, cases in which there is a report of an agreement on the issues of custody and visitation, and cases in which the parties need procedural information. This review may be conducted by the judicial officer as she or he reviews the cases, or may be performed by the facilitator.
- **Beginning the calendar session with a calendar call** to determine which parties are present, to further identify which cases may be referred to the facilitator, and to set priorities for calling cases for hearing.
- **Referral of cases for calculation of guideline child support** on non–Title IV-D calendars. Facilitators can often assist parties in reaching a stipulation for child support, or if no agreement is reached, can provide the judicial officer with information on the points in contention and with guideline child support calculations based on differing assumptions.
- **Referral to facilitator to prepare an *Order After Hearing.*** Experience has shown that this task can be performed at the time of the hearing much more efficiently than after the fact, because the court file, the parties, and the judicial officer are all

Continued on page 11

[1] The ideal situation would be to have a facilitator for each family law judicial officer in the court, in which case the facilitator could be present at every short cause calendar, and special calendaring would therefore be unnecessary. There is a benefit, in terms of calendar management, in having a mixture of attorney-represented and pro per cases.

Facilitators in the Courtroom
Continued from page 10

present, and any ambiguities or misunderstandings can be cleared up immediately. The parties can then either wait to receive a copy of the order (this is especially important if a restraining order is granted) or may leave self-addressed envelopes for later mailing of the order.

- **Referral to the facilitator to provide procedural information.** Self-represented parties often require explanations of court procedures that the judicial officer cannot provide. Such issues include how to properly serve the other party, how to go about obtaining a dissolution judgment or other forms of relief, and how to complete court forms of all types.
- **Use of the facilitator as a source of information.** The facilitator can save judicial time by talking to the parties and providing the judicial officer with factual information, points of contention between the parties, and other issues. In performing this task, it is important that the facilitator avoid the appearance of any prejudgment of issues, maintain a sense of neutrality in speaking with the parties, and avoid the appearance of having any ex parte communications with the judicial officer. The best practice is for the facilitator to provide only written communications to the judicial officer, copies of which are provided to each party before the case is called for hearing.

Assistance to parties in complying with court orders also should lead to better use of judicial time and benefits to the parties and their families. This assistance begins with helping the parties understand the orders; it continues with introductions to mandated community services such as job assistance programs, drug and alcohol treatment programs, parenting classes, co-parenting counseling and other forms of counseling, supervised visitation, and so forth. Facilitating the flow of information on parties' progress in these programs back to the court enables the court to maximize the benefits of these programs. The facilitator can either provide or help coordinate this kind of case management assistance.

The presence of the facilitator in the courtroom has substantial benefits. The judicial officer can save hearing time in pro per cases as a result of stipulated orders, and can make better use of hearing time when the pro per parties are better prepared to present their cases and more relevant information is available. The facilitator can provide extremely effective and efficient assistance to the parties, who do not need to make an additional trip to the courthouse for assistance, can have their orders and procedures explained to them at the optimum time, and can have procedural problems corrected through court orders as needed.

Since October 1997 Commissioner Sue Alexander has been a "1058" child support commissioner at the Superior Court of Alameda County, where she currently hears general family law matters in addition to section 1058 child support cases. She holds a master's degree in marriage, family and child counseling is also a family law specialist and a probate, estate planning, and trust law specialist certified by the State Bar of California. She is a member of the Judicial Council's Family and Juvenile Law Advisory Committee and of the State Ethics Committee for the California Association of Marriage and Family Therapists.

Tom Surh has been a family law facilitator for Alameda County since October 1997. Prior to that, he was a legal aid attorney, a county bar administrator, and a solo practitioner in the areas of family law, immigration law, and juvenile dependency trials and appeals. He is currently a member of the Committee on Professional Responsibility and Conduct of the State Bar of California.

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Improving Court-Agency Relations in Dependency Cases

Emily Landsverk, CFCC Law Clerk

The 2001 Beyond the Bench conference featured a preconference workshop entitled "The Real Beyond the Bench: Roundtable Discussions on Court-Agency Relations." The goal of the workshop was to facilitate communication and information sharing between judges, attorneys, and social workers in the dependency court setting, identify problem areas, and make recommendations for improvement.

The workshop formulated the following recommendations:

- Form a leadership group in each county that holds regular meetings to identify concerns, commit to accountability, and develop solutions;
- Encourage judges to communicate to achieve consistency and make the dependency court an equal player in the court system;
- Achieve better cross-communication within the agency;
- Foster collaboration between the presiding judge and the agency director to create a structured process for developing rules of engagement for all participants and to work with stakeholders to create an alternative continuum of services;
- Improve overall communication and reward creative collaboration;
- Hold localized joint training for attorneys, clerk staffs, and line workers, and hold local Beyond the Bench events;
- Enhance communication through a better understanding of roles and cross-training, with nonadversarial communication and ongoing feedback sessions to address role blurring.
- Develop curriculum through cross-training to ensure consistency for social workers and bench officers.
- Hold regular court improvement meetings of all players to identify and address systemic issues, such as the need for integrated training and the development of a common mission statement (the judge will convene the meetings);
- Reduce court time and related burdens by increasing prevention;
- Hold the bench, as well as the agency, accountable for Adoption and Safe Families Act (ASFA) outcomes; and
- Change the court-agency culture to foster better communication among all participants.

The members of the planning committee for this workshop were Judge Leonard P. Edwards of the Superior Court of Santa Clara County; Commissioner Patricia Bresee, of the Superior Court of San Mateo County; Pat Aguiar, Bureau Chief of the Foster Care Branch, State Department of Social Services; Danna Fabella, Director of Contra Costa County Children and Family Services; Sarah Carnochan, Coordinator for the Bay Area Social Services Consortium; and Christopher Wu, Supervising Attorney, Center for Families, Children & the Courts.

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SIXTH ANNUAL AB 1058 CHILD SUPPORT TRAINING CONFERENCE
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San Francisco

LEGAL INFORMATION VS. LEGAL ADVICE
Court Clerk Broadcast
September 24, 2002

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FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7739

Domestic Violence Hurts *Everyone*

Mary A. Duryee, Ph.D., Co-chair, Family Violence Council of Alameda County

The Death Review Team in Alameda County is releasing its first report, summarizing five years of fatalities in Alameda County that can be attributed to domestic violence. The report consists of a main section covering the years 1996 and 1997 and an addendum covering the years 1998, 1999, and 2000.

In the last five years in Alameda County, 20 to 30 people died each year as a result of domestic violence.

There were some expected trends over the five years.

- Of the homicide victims (82 people), most were killed by men who were known to be domestic violence perpetrators in their relationships with the victims. Forty-seven percent of the victims were women, 8 percent were "innocent bystanders" (children and Good Samaritans), and 3 percent were gay partners of the perpetrators.
- Five percent of the homicides were cases of perpetrators of domestic violence being killed by police, by a Good Samaritan, or by a relative of the domestic violence victim.
- Five percent were domestic violence perpetrators killed by their female partners.
- Two-thirds of the fatalities were the result of gunshot wounds. Eighty percent of the fatalities occurred at home.

There are several surprising findings. More than a quarter of the fatalities (26.4 percent) were suicides by domestic violence perpetrators. These were men who killed themselves after killing or trying to kill their partners.

Every year there were several incidents that included multiple fatalities. For example, several family members were killed by a perpetrator, and then the perpetrator killed himself or was killed by police. Therefore, the number of *fatalities* does not represent the number of *incidents*. This underscores the need to identify individuals who have crossed into a suicidal state and may also become dangerous to those around them. Although the State of California does not count the suicides of domestic violence perpetrators if there has not also been a homicide of the domestic violence victim, we felt it was important to include the cases in which there was an *attempted* but failed homicide.

When suicides and deaths of bystanders were included with the homicides, there was a startling result—men and women died of domestic violence–related events in nearly equal numbers: women made up 51 percent of the deaths; men, 49 percent. However, *they died under very different circumstances*. We found only one situation (of 122 fatalities) in which the domestic violence *victim* was male. In general, women were killed by their partners or ex-partners who had been abusing them, and men killed themselves or were killed by law enforcement or other protectors of domestic violence victims.

We also found that a child or children were present as witnesses to the fatality in *at least one-third of the incidents*—and possibly much more frequently than we were able to ascertain. Often the police at the scene did not record whether there were children present or with whom they were immediately placed. Different police jurisdictions within our county have different policies about handling these placements. Usually the initial placement at the scene was to any available relative. However, there is no mechanism at the moment for following up on these children. Sometimes this resulted in the long-term placement of children with the perpetrator's family, without a means of determining whether this was a wise decision. And, as far as we were able to ascertain, there was no mechanism for referring these children to crisis intervention services or long-term mental health services.

We conclude that, when it comes to domestic violence, *everyone is hurt.* Our response must be to continue to develop multiple ways of responding at multiple points in the system. The recommendations in the report, although focused on Alameda County, address issues that are likely to have statewide significance:

- Counties need to develop a protocol for placement of children who are found at the scene of a domestic violence fatality. Law enforcement, social services, family court services, and mental health services must collaborateto accomplish this task.
- We need to develop systemwide sensitivity to the potential for increased lethality in situations where there is a significant mental health issue for the batterer, especially depression, and find ways of intervening earlier. One means of doing this is to develop a lethality protocol, which would help police, emergency room personnel, and other first responders assess the potential for a situation to become lethal. A countywide protocol would also help first responders speak the same language to each other, across agency borders, about the seriousness of a situation.
- Given the large number of fatalities that were the result of the use of guns, we urge courts that issue temporary restraining orders in domestic violence cases to enforce the provision for turning over weapons when a restraining order is issued.

Continued on page 14

Domestic Violence Hurts *Everyone*

Continued from page 13

The Death Review Team is made up of representatives of both public and private agencies, all of whom donated their time to this effort. To pull together these data, the team reviewed all the county coroner's reports of trauma deaths from a given year. Those that involved or looked like they might have involved a domestic violence situation formed the initial pool of cases we reviewed. Our process after that was to obtain additional information from as many sources as possible (police reports, family court documents, Family Court Services records, hospital records) to determine whether each death was directly related to domestic violence.

For further information about the team—its history, recommendations, or analysis of the data—contact the author at 510-830-7080; e-mail: maduryee@aol.com.

For copies of the full report, contact Nancy O'Malley, Assistant District Attorney, 510-272-6208.

Dr. Duryee has been a psychologist in private practice in Oakland since 1978. She received an A.B. in Architecture at Stanford in 1971 before pursuing psychology. Her work in Alameda County began in 1976-1982 in the nationally recognized DSO (Deinstitutionalization of the Status Offender) program, where she directed the East Oakland Youth and Family Center. Dr. Duryee served as director of Alameda County Family Court Services from 1982 to 1995. She is an adjunct faculty member at UCSF/Mt. Zion, taught at the Wright Institute from 1989 to 1996 and has taught for the Center for Judicial Education and Research for over 10 years. She is a co-chair of the Alameda County Family Violence Council and chair of the Death Review Team in Alameda County.

Court Information in the Electronic Age

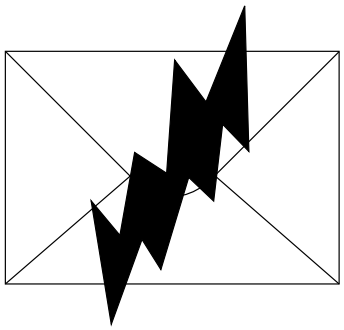
Continued from page 4

minimal risk of disclosure of proprietary business information, accessibility of court records, and public safety.

How Is Information Accessed? Court records traditionally are accessed by traveling to a courthouse and issuing a request for the files. Several new kinds of access are possible with electronic court records—ranging from access through terminals in the courthouse to remote access within a single court system with multiple courthouses, and to access by a member of the public, not known by or registered with a court system, who seeks to review selected court records or portions of those records through the Internet. Under the *Guidelines*, each court will determine the type and level of access that its resources and information technology permit.

In addition to individual case-level information, two categories of data are addressed in the *Guidelines:* bulk distribution of information (Section 4.40) and distribution of information compiled from court records (Section 4.50). Bulk information is a set of court information that exists in electronic form "as is" and without aggregation. Compiled information is an aggregation or reformulation of a subset of the information in electronic court records. Both the bulk and compiled data sections of the *Guidelines* address the condition of special requests for court data that is not otherwise publicly accessible, for "scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes."

When Is Access Permitted? Court records will be available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under its policy will be available for access at least during the hours established by the court



for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance (Section 5.00). Permissible fees for providing electronic data access are addressed in Section 6.00. The *Guidelines* do not view access to electronic records as a revenue source for a court or its funding body.

Notice and Education. The *Guidelines* require notice and education to litigants, users, and court employees about the fact of public dissemination of their court data and the procedures to follow to request restriction of the manner of access or to prohibit public access to their court records (Section 8.10). The *Guidelines* provide for a public education component of the court's work, asking the court to provide information to the public about how to access information in the court record and how to seek access to information where it has been restricted (Section 8.20). Finally, the *Guidelines* require the court to educate and train its employees about the access policy and how to respond to requests for access in a manner consistent with the *Guidelines* (Section 8.30). The *Guidelines* contain a provision holding information technology providers to the same standards as the court itself (Section 7.00). This includes the requirement to provide training to staff about the provisions of the policy (Section 7.00(b)).

Correction of Information. The *Guidelines* require a local court to adopt a rule establishing a process for "correcting" information in court records—making changes or additions that will make the

Continued on page 15

Court Information in the Electronic Age

Continued from page 14

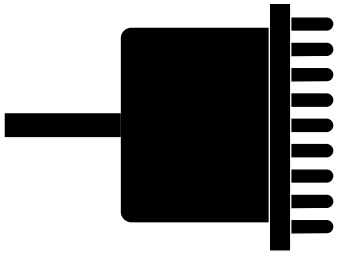
record more accurate and complete (Section 8.40). The request to review a court record can be initiated by any person about whom there is information in that record.

III. SPECIFIC CONCERNS IN THE AREAS OF FAMILY AND DOMESTIC RELATIONS LAW

The discussions of the project's advisory committee often touched on the areas of family and domestic relations law, with special consideration for the needs of those who come before the court involuntarily or whose case records have traditionally been protected from public scrutiny. While the policies debated by the advisory committee touched many areas of civil and criminal law, some of the areas that were the most complicated, nuanced, and difficult to finalize for committee members involved child welfare, domestic relations, and domestic violence. All these areas involve parties who are made a part of the court record involuntarily or whose contact information as part of the court record could pose safety and other risks. For courts considering policies on individual record privacy and public access, it is important to underscore that what happens in family, divorce, and child custody cases is different in substance, in spirit, and in effect from activity in other cases that come before the nation's state courts.

Typically, children who are involved in court proceedings are there involuntarily. In cases such as divorce of their parents or in the special cases of bankruptcy protected under federal court filing rules, children can be associated with allegations made by adult partners about each other. Rules about public access to these records, in either electronic or paper form, could have several effects.

1. The perception of increased public scrutiny of these court records might discourage individuals from making or inflaming allegations.
2. Some individuals might be encouraged to make allegations with limited foundation, with the goal of causing their court adversary additional harm, because the records have greater distribution to public.
3. Electronic distribution of court documents to the public via the Internet or another remote electronic means could prevent people from providing true and relevant court information, perhaps suppressing individual litigants' desire to use the formal court system and causing them to seek instead to resolve disputes through alternative means, including mediation.



Because many individuals in family law cases are self-represented, they might not be as aware as those with attorneys of which types of materials are relevant and which are not relevant as evidence to submit to the court. This might create challenges for court clerks in maintaining these documents and ensuring that access to them is appropriately restricted.

The public comment process elicited more than 130 comments from a wide array of individuals, ranging from private citizens who were angered to discover their traffic citations on a court Web site to data industry representatives articulating the case for continued broad access, and to victim advocates concerned with the effects of increased avenues of access to court information on already-frightened victims, such as potentially discouraging them from seeking the civil, criminal, and possibly life-saving remedies of the courts and law enforcement.

Revisions made to the *Guidelines* have attempted to take concerns from commentators into account and to create a product that protects the concerns of victims and their advocates, addresses the concerns of privacy advocates, facilitates law enforcement where possible, encourages the use of the nation's court systems, allows for legitimate access to court files and the information within them, and promotes the decision making of the nation's state courts.

The comments expressed some concerns regarding federal confidentiality statutes and child welfare case records. Although formal comments were not received from child welfare advocates or researchers during the public comment period, recent discussions with representatives of the ABA Center on Children and the Law and the National Council of Juvenile and Family Court Judges' Permanency Planning Department suggest that the *Guidelines* should clarify the potential ramifications of the Child Abuse Prevention and Treatment Act (CAPTA) provisions related to confidentiality, as well as confidentiality provisions in Title IV-B and E of the Social Security Act. The connections among these rules and proposed court policies on privacy and access to all court records have yet to be fully elaborated but should be reflected (or annotated) in court rules concerning access to court records.

CAPTA Amendments of 1996 and Confidentiality. The CAPTA amendments require states to preserve the confidentiality of all reports and records on child abuse and neglect, in order to protect the privacy rights of the child and the child's parents or guardians, except in certain limited circumstances. CAPTA prohibits disclosure of confidential child abuse and neglect information to persons or entities outside those enumerated in the statute. Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. The sole exception to these disclosure

Continued on page 16

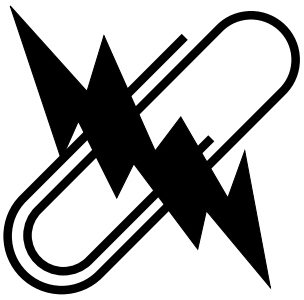
Court Information in the Electronic Age

Continued from page 15

restrictions is cases of child abuse or neglect that result in the death or near death of a child. In such cases, CAPTA requires public disclosure of the findings and information about the case.

Confidentiality, CAPTA, and Title IV-B and E of the Social Security Act. There may be instances in which CPS information is subject both to disclosure requirements under CAPTA and to confidentiality requirements under Title IV-E. The CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were enacted most recently. Records maintained under Title IV-B and E (both of which are subject to the department's confidentiality provisions in 45 C.F.R. 205.50) are to be safeguarded against unauthorized disclosure.

Title IV-B Confidentiality Provisions and the Release of Information. Records maintained under Title IV-B of the act are subject to the confidentiality provisions in 45 Code of Federal Regulations part 205.50, restricting the release or use of information about individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are, in turn, subject to the same confidentiality standards as the agencies administering those programs. The release of information that was obtained from the child welfare agency by any party (including the court), except in the circumstances identified in 45 Code of Federal Regulations part 205.50(a)(1)(i), would result in state violation of the state plan requirements for foster care and adoption.



Title IV-E Confidentiality Requirements Applied to Court Records of Children Served by the Title IV-B Agency. While the state plan requirements for child and family services in section 422 of the Social Security Act do not identify confidentiality restrictions, Title IV-B services are subject to the confidentiality regulations identified in 45 Code of Federal Regulations part 205.50. The regulation prohibits redisclosure of any information gained from the child welfare agency except for the identified purposes. The information to be safeguarded may be either written information or oral testimony and can be referrals from other agencies to the child welfare agency, services provided by the child welfare agency to the child or family, or referrals by the child welfare agency to other parties requesting that services be provided to the child or family. Note that only information obtained from the child welfare agency in the child welfare record is protected against redisclosure by the court under Title IV-B confidentiality requirements. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

Title IV-B and E Confidentiality Requirements and Information in Open Court. Some states have laws that allow open courts for juvenile protection proceedings, including child protection, termination of parental rights hearings, long-term foster care hearings, and dependency petition hearings. The confidentiality provisions for Title IV-B restrict the information that can be discussed in open court. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under this program and to ensure that confidential information is not disclosed to unauthorized recipients. Under Title IV-B and E, confidential information may be shared with the courts, but there is no provision that allows for public disclosure of such information. To the extent that open court proceedings involve discussion of confidential information concerning a child or family that is receiving Title IV-B child welfare services or a child who is receiving Title IV-E foster care or adoption assistance, the confidentiality requirements apply. Accordingly, such information may not be discussed in a public forum, including an open court. Violation of the federal confidentiality provision is a state plan compliance issue under Title IV-B.

Title IV-E and Child Welfare Information That Can Be Released When the Child Is Placed as a Juvenile Offender. No information that is gained from the child welfare agency may be released except for specifically identified purposes. Information that the court obtains from the child welfare agency must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Title IV-E, section 471(a)(8) do not apply.

Title IV-E and the Release of Information. The release of information that was obtained from the child welfare agency by any party (including the court), except in the circumstances identified in 45 Code of Federal Regulations part 205.50(a)(1)(i), would result in state violation of the state plan requirements for foster care and adoption.

IV. NEXT STEPS FOR THE PROJECT

All of the federal statutory provisions on confidentiality, along with population-specific concerns related to the current draft of the *Guidelines,* will be reviewed and assessed. In late July the memberships of CCJ and COSCA will have several opportunities to debate the draft policy during their annual joint confer-

Continued on page 17

Court Information in the Electronic Age

Continued from page 16

ence in Rockport, Maine. The project staff hopes that the memberships of those two conferences will vote to endorse the *Guidelines* in their final form. The staff also expects to provide technical assistance and support to states and jurisdictions grappling with this exciting and demanding new frontier of court responsibility for the records, and the lives, of citizens who come before them to resolve disputes.

Martha Wade Steketee joined the Washington office of the National Center for State Courts' Research Division as a senior research associate in July 1999. Her current and recent work at NCSC includes evaluating or developing work in several areas: court-based domestic violence case processing, interdisciplinary and interorganizational initiatives to address both child maltreatment and domestic violence, child and family welfare-focused court caseload and judicial workload measures, and policies to address public access to court electronic case records. Ms Steketee received an undergraduate degree from Harvard College, an M.S.W. with a specialty in child welfare policy from Washington University in St. Louis, and additional doctoral training at the University of Michigan and University of Pittsburgh.

Alan Carlson has been the president of the Justice Management Institute since January 2002. He continues to serve as project director and senior staff on JMI technical assistance and research projects and to develop JMI education and training workshops. Mr. Carlson directed the first phase of the SJI-funded project to develop a model policy on electronic access to court records based on existing state policies. Prior to joining JMI, he served in senior court management positions in courts throughout California and in the Western Regional Office of the National Center for State Courts. Alan received a B.S. in industrial engineering and operations research from the University of California at Berkeley and a J.D. from Hastings College of the Law.

Delinquency Case Summaries

CASES PUBLISHED FROM FEBRUARY 11 TO JULY 23, 2002

In re Michael D. **(July 16, 2002) 100 Cal.App.4th 115 [121 Cal.Rptr.2d 909]. Court of Appeal, Third District.**

The juvenile court sustained a petition alleging that a youth had violated Penal Code section 417.4. The youth pointed an imitation gun at another youth on a school playground. An employee of the school, believing that the youth was pointing an actual gun, alerted the police. The youth and his companions were detained nearby, searched, and released when no gun was found. The police, in a later search, found the imitation gun in the clothing of the boy at whom the youth had been pointing the gun. Penal Code section 417.4 states that "[e]very person who, except in self-defense, draws or exhibits an imitation firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor…." The youth contended on appeal that he did not violate section 417.4 because the youth at whom he pointed the imitation gun did not experience apprehension or fear. It was a bystander who experienced apprehension or fear. The youth also contended that it was necessary to prove that he "knew or should have known he was displaying the object before others in a manner likely to engender fear of bodily harm."

The Court of Appeal affirmed the juvenile court's order sustaining the petition. The court interpreted the "reasonable person" in section 417.4 to include anyone who was a witness to the actions concerning the imitation firearm, not just the person against whom the firearm was drawn or to whom it was exhibited. The court based its decision on the public policy concerns stated in the legislative history, including the need to address situations where a person brandishing an imitation firearm is wounded or killed by a police officer or bystander. Similarly, the appellate court also concluded that the language of section 417(a)(2), making it a crime to draw or exhibit an actual gun in a threatening manner "in the presence of any other person" does not preclude an interpretation of section 417.4 that a bystander and not just the victim may also experience fear or apprehension even though section 417.4 is not as explicitly drafted. The appellate court rejected the youth's contention that it was necessary to prove that he "knew or should have known" that he was creating fear of bodily harm by his display of the gun before others, because section 417.4 has no specific intent element. The question was, therefore, whether there was enough evidence to support the conclusion that a reasonable person in the bystander's position would have felt fear or apprehension. The appellate court concluded that there was substantial evidence supporting the conclusion in this case.

In re Brandon H. **(June 28, 2002) 99 Cal.App.4th 1153 [121 Cal.Rptr.2d 530]. Court of Appeal, First District, Division 3.**

The juvenile court found a youth guilty of a felony burglary. The youth had admitted the burglary in San Mateo County Juvenile Court. The case was transferred to San Francisco County, where the youth resided, and that court refused to consider the youth's motion to withdraw his plea. The San Francisco court transferred the case back to San Mateo for a ruling, but the case was transferred back to San Francisco

Continued on page 18

Delinquency Case Summaries

Continued from page 17

without a ruling on the matter. The San Francisco court again refused to consider the motion because it believed that it lacked jurisdiction. The youth contended that the San Francisco Juvenile Court erred in refusing to consider his motion.

The Court of Appeal held that the San Francisco court erred in refusing to consider the motion. Unlike adult criminal defendants, juvenile cases may be transferred, under Welfare and Institutions Code section 750, to the county where the youth or his custodian resides, provided appropriate conditions are met under that section and rule 1425 of the California Rules of Court. Once a case is properly transferred, the new court has jurisdiction over the case for all purposes. Therefore, the San Francisco Juvenile Court erred both in refusing to consider the motion and in transferring the case back to San Mateo County.

In re Brittany L. **(June 10, 2002) 99 Cal.App.4th 1381[122 Cal.Rptr.2d 376]. Court of Appeal, Second District, Division 7.**

The juvenile court declared the youth to be a ward of the court, sustaining a petition filed under the Welfare and Institutions Code section 602 and finding an offense of felony vandalism. The youth caused damage to the victim's house by throwing eggs at it. At the restitution hearing, the court ordered victim restitution of $500, the amount of the victims' insurance deductible. The victims had requested full reimbursement for the repair costs because they did not want to report the damage to their insurance company. The court required the victims to pursue independent remedies against the insurer and/or the youth in a civil action for full recovery. The appellate court, after appellant youth filed a notice of appeal and the People chose not to file a brief, requested briefing on whether the juvenile court followed the mandates of section 730.6 during the restitution hearing. The youth also appealed for the determination of whether the order should be vacated and the case remanded for a new restitution hearing with the requisite findings on the victims' entitlement to direct restitution.

The Court of Appeal vacated the disposition order and remanded for a new restitution hearing. Welfare and Institutions Code section 730.6 requires minors found to be persons within the meaning of section 602 to pay restitution to the victim "of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses … the actual cost of repairing the property…." Trial courts, in ordering victim restitution, are not to consider reimbursement from third parties, such as insurance companies. The appellate court reasoned that the victims should be fully reimbursed directly by the youth without regard to potential insurance reimbursement, based on the California Supreme Court's reasoning in *People v. Birkett*, 21 Cal.4th 226. Therefore, the juvenile court's order should have included all proven losses from the crime without regard to insurance reimbursement. The appellate court also found that section 730.6 required the sentencing court to consider the evidence and determine the amount of restitution necessary to fully reimburse victims. Also, in order to satisfy due process and ensure fundamental fairness, the youth must have a reasonable opportunity to challenge the accuracy or validity of the claimed losses. The juvenile court in this case erred in not considering the evidence proffered to challenge the claimed losses. The appellate court thus vacated the disposition order and remanded for a review of all proffered evidence of the victims' claimed losses and the challenges to the amount or validity of the losses. On remand, the juvenile court must also determine the amount necessary for full reimbursement for all economic loss as a result of the crime unless there are compelling and extraordinary reasons for not doing so. The trial court, in making this determination, may use "any rational method . . . provided it is reasonably calculated to make the victim whole."

In re Antonio F. **(May 30, 2002) 98 Cal.App.4th 1227 [20 Cal.Rptr.2d 325]. Court of Appeal, Fourth District, Division 3.**

A juvenile was found to be in violation of Welfare and Institutions Code section 871, which provides that any individual under the custody of a probation or peace officer who escapes or attempts to escape (1) from a juvenile hall, ranch, camp, or forestry camp or (2) "during transportation to or from that place" is guilty of a misdemeanor.

The juvenile was committed to a juvenile facility. At a working field trip at the Kidseum, a private facility, he escaped while supposedly using the bathroom. The juvenile court found him guilty for violating section 871. The juvenile appealed, arguing that the facility from which he had escaped did not fall under the statute.

The Court of Appeal reversed the juvenile court's decision. The Attorney General argued that, although the juvenile had not escaped from one of the statutorily enumerated facilities, he had escaped from the probation officer's custody and thus violated the statute. Relying on *In re Thanh Q.* (1992) 2 Cal.App.4th 1386 and *In re Jason G.* (1996) 46 Cal.App.4th 1017, the appellate court in the case at hand rejected the Attorney General's argument, holding that the Legislature intended the statute to cover only the enumerated facilities. The appellate court had found in both of the referenced cases that the statute covered only the enumerated facilities. After the court's decisions, the Legislature had amended the statute to cover the facility at issue in one of the cases but not that in the other. The juvenile court erred in finding that section 871 applied to a juvenile committed to a county juvenile facility who escapes from a site to which he has been taken for a "working field trip." The juvenile court's judgment was reversed. The appellate court deferred

Continued on page 19

Delinquency Case Summaries

Continued from page 18

to the Legislature to address this situation and possibly clarify the statute's language.

In re Robert H. **(March 21, 2002) 96 Cal.App.4th 1317 [117 Cal.Rptr.2d 899]. Court of Appeal, Second District, Division 7.**

The juvenile court adjudged a child a ward of the court for illegally possessing a firearm (Pen. Code, § 12021(a)(1).) The original petition alleged that the child had violated Penal Code section 245(a)(2) (assault with a firearm), but the child admitted to the lesser offense after a case settlement.

A child exchanged words with a young adult at a convenience store, and this led them to "take it outside." The young adult threw a punch at the child, and the child ran across the street. As the young adult followed him across the street, the child fired at the young adult three or four times with a handgun. Then the child continued to run, and he was stopped by a nearby police officer. After careful deliberation over disposition, the juvenile court ordered that the child be sent to a camp-community placement. The child appealed, contending that the juvenile court had erred by (1) ordering camp-community placement over home probation, (2) ordering conditions of supervision for drug and alcohol testing, and (3) failing to make the formal finding required by Welfare and Institutions Code section 726.

The Court of Appeal reversed the juvenile court's orders insofar as the latter had failed to make reasonable orders under Welfare and Institutions Code section 730 and failed to make a section 726 finding. The other juvenile court orders were affirmed. Regarding the disposition, the child argued that the court had improperly considered the facts of the assault and not the lesser charge. The appellate court noted that the juvenile court had properly considered the facts that the child had shot at another person without justification.

The juvenile court had considered all relevant information, such as the probation's officer's recommendations and the psychologist's evaluation, in determining that the gravity of the offense dictated the camp order. The appellate court rejected the child's argument that the juvenile court had based its decision on the gravity of the offense alone and had not taken into consideration that his parents provided a good home for him. The juvenile court had properly exercised its discretion in ordering the child to camp-community placement.

The juvenile court in this case had not imposed any conditions of supervision along with its camp-community placement order, although the imposition of supervision conditions appeared in the minute order. The appellate court remanded the matter for the juvenile court to make reasonable orders limiting the child's conduct while he was in the camp-community placement program. The juvenile court should consider any of the child's objections. The juvenile court had also failed to make the Welfare and Institutions Code section 726 finding. The appellate court ordered the juvenile court to make its section 726 finding.

Manduley v. Superior Court of San Diego County **(February 28, 2002) 27 Cal.4th 537 [117 Cal.Rptr.2d 168]. Supreme Court of California.**

Proposition 21, titled the "Gang Violence and Juvenile Crime Prevention Act of 1998" and approved by the voters in the March 7, 2000, primary election, changed several aspects of the law that are applicable to minors who commit criminal offenses. The youths in this case challenged one section of that law—Welfare and Institutions Code section 707(d)—that grants the prosecutor discretion to charge a youth as either an adult or a juvenile without a prior adjudication in juvenile court that the minor is unfit for a disposition under the juvenile court law. Once a youth is convicted of a section 707(d) crime in adult court, the judge must sentence the youth under the adult sentencing scheme.

The San Diego County District Attorney's Office filed accusatory pleadings against the youths in adult court under section 707(d). The youths challenged the constitutionality of section 707(d) by demurring to the accusatory pleadings. They contended that section 707(d) is unconstitutional on five grounds: (1) it violates the separation of powers doctrine, (2) it deprives them of due process, (3) it deprives them of equal protection, (4) it deprives them of the uniform operation of the law, and (5) Proposition 21 violates the single-subject rule. The trial court overruled the demurrers, arguing that section 707(d) does not violate the separation of powers doctrine because the decision whether to charge with crimes lies within the traditional power and discretion of the prosecutor. The trial court rejected the youths' four other claims as well. The youths filed a writ of mandate in the Court of Appeal. All petitions were consolidated for oral argument and decision. The Court of Appeal addressed only the first claim.

The Court of Appeal concluded that section 707(d) is unconstitutional under the separation of powers doctrine because it allows the prosecutor to interfere with the court's authority to choose a juvenile court disposition for minors who have committed crimes. The issue presented in this case—whether this provision of Proposition 21 violates the separation of powers

Continued on page 20

Delinquency Case Summaries

Continued from page 19

doctrine—turned on whether the discretionary direct filing provisions in section 707(d) are considered "a charging decision that is properly allocated to the executive branch or a sentencing decision that is properly allocated to the judicial branch and may not be delegated to the executive branch in derogation of the judicial power over sentencing." The appellate court recognized that in this case the discretionary filing decision granted the prosecutor could not easily be described as either a traditional charging decision or a traditional sentencing decision. The appellate court held that, when one considers the substance of the power and the effect of its exercise, rather than the timing of the decision, section 707(d) violates the separation of powers doctrine by giving the prosecutor the "unchecked authority to prescribe which legislatively authorized dispositional scheme will be available to the court if the charges are found to be true." The Court of Appeal did not address the youth's five other claims. San Diego County appealed.

The Supreme Court reversed the Court of Appeal decision on the separation of powers claim, and addressed and rejected the youths' four other claims. On the first claim, the Supreme Court held that the Court of Appeal had adopted too narrow a view of the prosecutor's discretionary power. Prosecutors may select the forum, within statutory constraints, in which charges may be filed, and if such a decision affects the sentencing alternatives available to the court, the court's powers have not been improperly usurped. The Supreme Court rejected the appellate court's focus on the substance of the power and the effect of its exercise, arguing instead that the timing of the prosecutor's discretionary exercise is dispositive. The Supreme Court examined a line of cases exploring the separation of powers doctrine as it related to dispositions for certain minors convicted of crimes. These cases held that the "separation of powers doctrine prohibits the legislative branch from granting prosecutors the authority, *after* charges have been filed, to control the legislatively specified sentencing choices available to the court." This case, however, deals with discretionary power exercised *before* the filing of charges, and that power is not invalid "simply because the prosecutor's exercise of such charging discretion necessarily affects the dispositional options available to the court."

The Supreme Court rejected the appellate court's alternative argument that, because before adoption of section 707(d) the court made the fitness determination for a minor accused of a crime after a judicial hearing, the decision on which dispositional scheme applies is "adjudicatory in nature" and thus the discretionary power granted to prosecutors in section 707(d) violates the separation of powers doctrine. The Supreme Court held that the mere fact that the court made a fitness determination historically does not, alone, invalidate the statute. In the cases where section 707(d) applies, the statute dispenses with the requirement of a hearing, and thus equating the juvenile court's fitness determination with the prosecutor's decision pursuant to section 707(d) was erroneous. A district attorney can take into account some of the factors the court ordinarily considers in a fitness hearing but is not required to do so.

The Supreme Court rejected the youths' due process claim. The youths argued that because a minor accused of a crime has a statutory right to be subject to the jurisdiction of the juvenile court, before a minor can be deprived of that right, he or she is entitled to a hearing to determine whether he or she is amenable to juvenile court disposition. Because section 707(d) does not allow for a hearing or set forth criteria guiding the prosecutor's decision, the youths argued, the statute violates their constitutional due process rights. The Supreme Court denied this claim, arguing that juveniles who "commit crimes under the circumstances set forth in section 707(d) do not possess any statutory right to be subject to the jurisdiction of juvenile court." The legislative branch can give the prosecutor discretion whether to file charges against a minor in criminal court, and can eliminate a juvenile's statutory right to a fitness hearing. Section 707(d) "does not implicate any protected interest of petitioners that gives rise to the requirements of procedural due process."

The Supreme Court rejected the youths' equal protection claim and their claim that section 707(d) violates the uniform operation of the laws. The youths argued that section 707(d) violates a juvenile's right to equal protection of the law because the statute allows prosecutors to treat minors of the same age, who are charged with the same offense, differently solely on the basis of their discretion—without any statutory guidelines—leading to arbitrary and possibly discriminatory results. The Supreme Court held that this claim had no merit, arguing that traditional prosecutorial charging discretion encompasses decisions on how to apply the same law to different offenders, often without any express statutory criteria guiding such decisions. Absent actual proof of discrimination, none of these prosecutorial decisions have been found to be unconstitutionally arbitrary, and therefore "section 707(d) does not deprive petitioners of the equal protection (or the uniform operation) of the laws."

Finally, the Supreme Court rejected the youths' argument that Proposition 21 is invalid in its entirety because it violates the single-subject rule for ballot initiatives in California. The single-subject rule holds that "an initiative embracing more than one subject may not be submitted to the electors or have any effect." The youths claimed that Proposition 21 addresses three distinct subjects that do not relate to a sufficiently defined common theme or purpose: (1) gang-related crime, (2) the

Continued on page 21

Delinquency Case Summaries

Continued from page 20

sentencing of repeat offenders, and (3) the juvenile justice system. The Supreme Court held that an initiative "does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are 'reasonably germane' to each other." Each of the provisions in an initiative does not have to "interlock in a functional relationship." The purpose of Proposition 21, as expressed by its title, is to address the problem of violent crime committed by juveniles and gangs—not to reduce crime more generally, as the youths claimed. Despite some collateral effects of the provisions that reach beyond the stated purpose, each of the provisions bears enough of a "reasonable and commonsense relationship" to that purpose to meet the standard of the single-subject rule. Justices Kathryn Mickle Werdegar and Carlos R. Moreno wrote separate concurrences on the single-subject rule analysis.

Justice Joyce L. Kennard dissented. The dissent disagreed with the majority's analysis of the separation of powers doctrine, agreeing with the Court of Appeal that the validity of section 707(d) turns on "the substance of the power and the effect of its exercise," not the timing of the prosecutor's decision. Justice Kennard argued that section 707(d) "unconstitutionally invaded a judicial function" for several reasons: the decision whether a minor is unfit for juvenile disposition has historically been a judicial function; "the decision whether to prosecute a juvenile in adult court is a critical one, and thus deserving of the due process protections of a judicial proceeding"; and under section 707(d) a prosecutor makes this critical decision whether to charge a juvenile in juvenile or adult court with limited information about the minor. The dissent states that the doctrine of separation of powers would be satisfied if the prosecutor's initial decision were subject to judicial review.

Dependency Case Summaries

CASES PUBLISHED FROM FEBRUARY 11 TO JULY 23, 2002

In re Edward H. **(July 12, 2002) 100 Cal.App.4th 1 [122 Cal.Rptr.2d 242]. Court of Appeal, Fifth District.**

The juvenile court terminated the parental rights of a mother under Welfare and Institutions Code section 366.26. The juvenile court gained jurisdiction over the children under section 300(b) and (g). While the section 366.26 hearing was pending, Stanislaus County Community Services Agency, upon being informed that the children may belong to a Choctaw Indian tribe, inquired of and gave notice of the proceedings to the Bureau of Indian Affairs (BIA) and two of the three Choctaw tribes: the Choctaw Nation of Oklahoma and the Mississippi Band of Choctaw Indians. The children were not declared to be Indian by the BIA or the tribes, and the court ruled that the Indian Child Welfare Act (ICWA) did not apply. The mother contends that the juvenile court was in error in terminating her parental rights because no notice was given to the third federally recognized Choctaw tribe, the Jena Band.

The appellate court upheld the termination order, holding that if the responsible agency also gives notice to the BIA, notice to some but not all possible tribes does not violate the ICWA. Rule 1439(f)(3) of the California Rules of Court states that notice is required to "all tribes of which the child may be a member or eligible for membership." However, ICWA (25 U.S.C. § 1912(a).) only requires notice to "the Indian child's tribe." Both provisions allow notice to the Secretary of the Interior if the tribe cannot be identified or located. If the tribe does not decide otherwise, the BIA, as agent for the Secretary, may determine whether or not a child is an Indian under rule 1439(g)(4) of the California Rules of Court. In addition, case law supports notice to the BIA as sufficient compliance with ICWA if the agency cannot identify the correct band or tribe. Here, the correct tribe of Choctaw Indians was unknown, and still the agency notified 2 of 3 Choctaw tribes and also the BIA. Therefore, the court upheld the order terminating parental rights and held that the agency did not violate the ICWA.

In re Samuel P. **(July 2, 2002) 99 Cal.App.4th 1259 [121 Cal.Rptr.2d 820]. Court of Appeal, Second District, Division 6.**

The juvenile court removed three children from the care and custody of a mother under Welfare and Institutions Code section 300(b). The mother was of American Indian ethnicity, but the section 300 petition did not indicate that the children might be Indian or eligible for membership in an Indian tribe. The Department of Family and Children's Services (the Department) sent a "Request for Confirmation of Child's Status as Indian" for only one of the children to the Santa Ynez Band of Mission Indians, 17 other tribes, and the Bureau of Indian Affairs. The social worker's report indicated that the children were of Chumash descent, that the Indian Child Welfare Act (ICWA) might apply, that the children's ICWA eligibility status was unknown and that the mother had stated that her family was enrolled in the Santa Ynez Chumash tribe. None of the court's orders, however, discussed the children's possible Indian affiliation or any application of ICWA. The mother contended on appeal that notice was not properly made under ICWA, that the court erred in not

Continued on page 22

Dependency Case Summaries

Continued from page 21

applying ICWA's requirements at the disposition hearing, and that she had not waived the issue.

The Court of Appeal reversed the disposition orders of the juvenile court and remanded the case to the juvenile court to comply with the notice requirements under ICWA. The court determined that actual notice to the tribe about the proceedings and the right to intervene was required under ICWA (25 U.S.C. § 1912) and *In re Desiree F.*, 83 Cal.App.4th 460, 470. The notice sent about one of the children was inadequate because it was only a request for confirmation of status and contained no information about the proceedings, no court number for the proceedings, and no notice of the dates of the hearings. The Department was also in error in not sending notice for any of the other children. Also, there was enough information to support probable cause for the court to believe that the children were affiliated with the Chumash tribe. Even though it was uncertain whether the mother was a tribal member herself, there was concrete information about the tribal affiliation of several of her family members. Given this information, the appellate court concluded that the juvenile court was required to proceed as if the child was an Indian child or make further inquiry to affirm tribal affiliation under rule 1439(e) of the California Rules of Court, and ICWA (25 U.S.C. § 1912(e).)

The appellate court also held that the appeal of the dispositional orders was timely. The mother had not waived her claim of improper notice even though she did not raise the issue during the juvenile court proceedings. The court noted that, because the notice requirements serve the interests of the Indian tribe regardless of the parents' position, a parent cannot waive the tribe's interests. Therefore, the appellate court reversed the disposition orders of the juvenile court and remanded the case to the juvenile court to comply with the notice requirements under the ICWA.

In re S.D. **(June 27, 2002) 99 Cal.App.4th 1068 [121 Cal.Rptr.2d 518]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated the parental rights of a mother and father under Welfare and Institutions Code section 366.26. After the mother was arrested and incarcerated for credit card fraud, neither she nor the father was available to care for the minor. The father was also incarcerated at the time of the appeal. There were several relatives available and willing to care for the child. The juvenile court sustained a dependency petition and obtained jurisdiction over the child. There was neither an allegation nor evidence that the mother was unable to arrange for care for the child while she was incarcerated. The mother successfully completed her case plan, but the court terminated reunification services and set a section 366.26 hearing because the mother was not released on parole as anticipated. The mother contended on appeal that the juvenile court lacked a basis to take jurisdiction because she was able to arrange for care for the minor in the dependency petition and that she received ineffective assistance of counsel.

The Court of Appeal reversed the judgment of the juvenile court and remanded the case to the juvenile court with directions to give the social services agency an opportunity to cure the jurisdictional allegations deficiencies and prove that neither parent could currently arrange for care for the minor while they are incarcerated. Welfare and Institutions Code section 300(g) requires that an incarcerated parent not only be unable to care for the child but also be unable to arrange for care. The appellate court found that the fact that the mother had not already arranged for care by the time of her incarceration to be irrelevant because the issue was whether, at the time of the jurisdictional hearing, she could arrange for care. At the time of the jurisdictional hearing, the record demonstrated that there were several persons available to care for the child. The appellate court found that the mother's counsel was ineffective because he misunderstood the statute, conceding incorrectly that the statute applied to the case, and thus failed to oppose the court's finding the child to be under its jurisdiction. The appellate court found that, absent any evidence that the mother herself had known of the issue, the mother had not waived it, and allowed her to raise it for the first time on appeal. The court found that to deny the mother the right to correct her counsel's "erroneous concession of the key legal issue" in spite of the fact that the law and the facts were on her side would be a deprivation of fundamental fairness and would violate due process. The appellate court, therefore, reversed the judgment terminating parental rights and remanded the case to the trial court to determine whether, at the time of remand, there is a basis for amending the dependency pleading and proving that neither parent is either available to take care of the child because of incarceration or is unable to arrange for his care for the remainder of the incarceration period.

In re Brian P. **(June 21, 2002) 99 Cal.App.4th 616 [121 Cal.Rptr.2d 326]. Court of Appeal, Fifth District, Division 3.**

The juvenile court terminated a father's parental rights and found his child likely to be adopted.

Continued on page 23

Dependency Case Summaries

Continued from page 22

A child was declared a dependent of the court, and the mother's reunification services were terminated. A Welfare and Institutions Code section 366.26 hearing was set. No services had been set for the father, because the social services agency had been unable to locate him and his paternity had not been established. The section 366.26 hearing was continued when the father came forward by contacting the child welfare worker. The father, who said he was an undocumented alien, had been kept away from the child. He told the social worker that he would like his relatives who were legal residents to adopt the child. At the section 366.26 hearing, the court found that, although the father's paternity had been established, there was clear and convincing evidence that the child was adoptable. The parental rights were terminated and visitation was prohibited. The father appealed the decision, arguing that the order was not supported by substantial evidence.

The Court of Appeal reversed the lower court's holding, finding a lack of substantial evidence to support the juvenile court's finding of adoptability. The agency disputed the father's claim that there was not substantial evidence, and asserted that the father had waived the right to make that claim by failing to preserve the claim below. The father argued that although defects in the adoption assessment can be waived, no objection is necessary to preserve a claim of failure of proof. The appellate court agreed. When the merits are contested, a parent is not required, in order to raise the issue on appeal, to object to the social service agency's failure to carry its burden of proof on the question of adoptability. On the issue of whether there was substantial evidence to support the adoptability finding, the appellate court also disagreed with the lower court. There must be clear and convincing evidence of the likelihood that adoption will take place within a reasonable time. The evidence must be so clear as to leave no substantial doubt. The appellate court held that in this case, the juvenile court did not have the benefit of an adoption assessment report, which would have contained the facts needed to support a finding of adoptability. The reports that did exist said nothing of the likelihood of the child's adoptability, merely noting that the child was approved for adoptive services. The juvenile court erred when it made its finding of adoptability on such scant evidence. The Court of Appeal reversed the lower court's finding.

In re Angela C. **(June 14, 2002) 99 Cal.App.4th 389 [120 Cal.Rptr.2d 922]. Court of Appeal, Fifth District.**

The juvenile court terminated a mother's rights.

The court adjudged a child a dependent of the court based on the mother's physical abuse of the child. After a year of unsuccessful reunification efforts, the court terminated services. The mother did not attend the Welfare and Institutions Code section 366.26 permanency hearing, which was continued. The mother also did not attend the continued hearing, where her parental rights were terminated. The mother then appealed the juvenile court's decision, arguing that she had not received notice of the continuance of the termination hearing.

The Court of Appeal found that the mother had not received notice and that this error was a violation of due process but was harmless. Section 366.23 states that a person is entitled to special notice of a section 366.26 hearing. When a court continues that hearing, a parent is entitled to notice of the continued hearing date. Only if the parent is present in trial when the continuance is announced is the court not required to meet the precise terms of section 366.23 in the case of a continuance.

In this case, the mother received notice of the initial hearing, but the record is silent as to any notice to her of the continued hearing. The question is: Under what standard should the error of lack of notice for a continued hearing be evaluated? The mother argued that the lack of notice is per se prejudicial. The appellate court rejected this argument, holding that even though the lack of notice is a constitutional error, constitutional error (although subject to at least a heightened standard of prejudice) does not automatically require reversal. The court held that lack of notice of a continuance is a trial error—not a structural error, which implicates the fundamental fairness of proceedings and so would require per se reversal. The error of lack of notice for a continuance merely affects the way the court conducts the hearing, in that it becomes an uncontested hearing—which, the court notes, is how the initial hearing would have been conducted since the mother was absent from that hearing as well. Thus, the error is to be evaluated under the *Chapman* harmless-error standard. Because the child was thriving in placement and the agency's assessment of the child's adoptability met statutory requirements, the Court of Appeal held that the failure to notify the mother of the continued termination hearing date was harmless beyond a reasonable doubt. The juvenile court's decision was affirmed.

In re Nicholas H. **(June 6, 2002) 28 Cal.4th 56 [120 Cal.Rptr.2d 146]. Supreme Court of California.**

The juvenile court held that a man, despite admitting that he was not a child's biological father, was the presumed father.

A child was adjudicated a dependent child under Welfare and Institutions Code section 300 on the basis of a petition that his parents had not adequately cared for him. The man obtained temporary custody after filing a petition to establish a parental relationship with the child. The man was named as the father on the child's birth certificate, participated in the birth of the child,

Continued on page 24

Dependency Case Summaries

Continued from page 23

provided a home for the mother and the child for several years, and consistently treated the child as his son. The mother was addicted to drugs, perpetually unemployed, and violent. The biological father did not come forward to assert parental rights.

The juvenile court held that the presumption under Family Code section 7611(d) that the man was the natural father had not been rebutted by the man's admission that he was not the biological father, and awarded the man presumed father status. The Court of Appeal reversed this decision, arguing that the man did qualify as the child's presumed father under section 7611(d) but that, under section 7612(a), his admission that he was not the biological father necessarily rebutted that presumption. The man appealed.

The Supreme Court reversed the Court of Appeal decision, reinstating the man as the presumed father. Section 7611(d) states that a "man who receives a child into his home and openly holds the child out as his natural child is presumed to be the natural father of the child." The presumption that he is the natural father is a rebuttable presumption and "may be rebutted in an appropriate action only by clear and convincing evidence" under section 7612(a). The Court of Appeal, relying on *In re Olivia P.* (1987) 196 Cal.App.3d 325, argued that the juvenile court had no discretion under section 7612(a) but to find that the presumption arising under section 7611(d) was rebutted by the presumed father's admission that he was not the biological father. The Supreme Court rejected that argument, noting that the Court of Appeal's harsh interpretation of section 7612(a) would have left the child fatherless and homeless, and argued that this result was not required by section 7612(a). The Supreme Court held that a case in which no other candidate steps forward as the father is not "an appropriate action" in which to find the presumption in section 7611(d) rebutted (see *In re Kiana A.* (2002) 93 Cal.App.4th 1109; see also *In re Raphael P.* (2002) 97 Cal.App.4th 716.

The Supreme Court also supported its decision with section 7612(b), which states: "if two or more presumptions arise under section 7611 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls." The Supreme Court argued that if the Legislature had intended to preclude a man who is not the biological father from ever being a presumed father under section 7611, it would not have provided for such weighting. In addition, the Supreme Court noted that, for men who are presumed fathers under section 7611 by virtue of a voluntary declaration of fatherhood pursuant to section 7573, the Legislature allows, but does not require, a blood test to disprove presumed paternity. The Legislature would not have adopted a contrary rule that a blood test (or an admission) must defeat the claim of a man who claims presumed father status under section 7611(d).

The juvenile court's holding was affirmed.

***In re Joy M.* (June 6, 2002) 99 Cal.App.4th 11 [120 Cal.Rptr.2d 714]. Court of Appeal, Fourth District, Division 3.**

The juvenile court denied a father reunification services under Welfare and Institutions Code section 361.5(b)(2).

The father had a long history of paranoid schizophrenia, and the mother, who also had a history of mental illness, disappeared when the child was a baby. The father remarried and, years later, got divorced. The father retained custody, although the child was detained soon after the divorce because the father was delusional and neglectful of his child. The child was put in the custody of her stepmother. At the disposition hearing, the father's psychiatrist said he was suffering from a disabling mental illness and was unable to benefit from reunification services. The father's lawyer argued that the evidence to deny reunification services was insufficient because the psychiatrist was not qualified under law to make a recommendation. The court disagreed, declared the child a dependent, and denied the father reunification services and visitation rights. The father appealed, arguing that the court had improperly relied on a psychological evaluation report to deny reunification services and should have allowed monitored phone visits, and that insufficient evidence supported one of the grounds for denial.

The Court of Appeal affirmed the trial court's denial of reunification services. Welfare and Institutions Code section 361.5(b)(2) provides that reunification services need not be provided when the court finds by clear and convincing evidence that the parent or guardian is suffering from a mental disability that renders him or her incapable of utilizing those services. The court may deny reunification services for an allegedly mentally disabled parent or guardian only when "competent evidence from mental health professionals," as defined by Family Code section 7827, is presented. In this case, there was no evidence that the father's psychiatrist was not qualified to provide competent evidence. An expert's competency is not an element of proof related to the merits, so it must be raised and considered in the trial court. The father's lawyer, although arguing that the evidence was insufficient, did not expressly object to the psychiatrist's report. The trial court properly took into account the psychiatrist's report when denying reunification services, since proof of qualifications is unnecessary absent an objection.

The appellate court rejected the father's argument that he should not have been denied monitored phone visits with his child. He argued that because he was allowed monitored written communication, he should have

Continued on page 25

Dependency Case Summaries

Continued from page 24

been allowed monitored phone communication. The trial court has broad discretion to deny or limit visitation after custody has been taken from a parent. Because the child expressed fear of her father and wanted no contact with him, and because monitored phone calls would be difficult administratively, the appellate court held that the trial court had not abused its discretion when it denied monitored phone visits. The appellate court did not consider the father's final argument that insufficient evidence supported the court's decision to assume jurisdiction over the child, and affirmed the trial court's decision to deny reunification services.

In re Randalynne G. **(April 24, 2002) 97 Cal.App.4th 1156 [118 Cal.Rptr.2d 880]. Court of Appeal, Fourth District, Division 2.**

The juvenile court denied a mother additional visitation with her child.

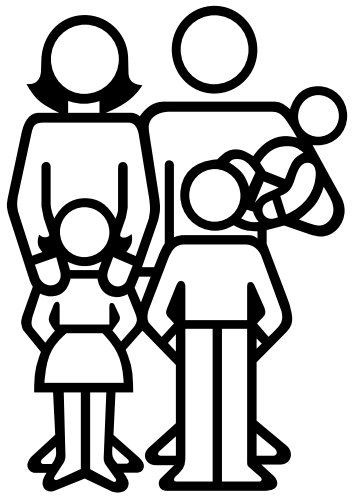
At birth, a child and mother both tested positive for methamphetamines, and immediately a petition was filed to declare the baby a ward of the court. The baby was detained and placed with the father on certain conditions, and the mother was allowed to live in the home on certain other conditions. A second dependency petition was filed when the mother was arrested for drug possession. After the father was arrested for grand theft and the mother unsuccessfully absconded with the child, the child was declared a dependent and was placed in foster care.

The juvenile court eventually terminated reunification services and set the case for a Welfare and Institutions Code section 366.26 hearing. The Department of Children and Family Services (DCFS) declared the baby unadoptable and recommended a plan of long-term foster care to which the court agreed. The parents were allowed two supervised visits with the child per month. Following two denied petitions by the parents to recommence reunification services, the juvenile court appointed the foster parent the legal guardian of the child, and ordered that visitation be directed by the legal guardian.

At a postguardianship contested hearing on visitation, the mother sought additional visitation with her child, arguing that two visits per month were not reasonable visitation. The juvenile court denied that request because the mother had failed to file a section 388 petition before indicating that it was in the best interest of the child to change the visitation plan. The juvenile court also re-emphasized that the guardian retained discretion over visitation. The mother appealed.

The Court of Appeal, in this partially published opinion, reversed the visitation order on the ground that there is no legal precedent allowing the courts to delegate control of visitation to private persons. When a guardianship is established, the court must make a visitation order. A court may not delegate discretion regarding whether visitation may occur but may delegate the time, place, and manner of visitation. However, the court may not delegate even such discretion to a private party, such as a legal guardian, a therapist, or the child. Whereas such persons are not accountable to the court, a child protective services agency is accountable. The juvenile court erred when it gave discretion over visitation to the legal guardian.

The appellate court rejected the mother's argument that the visitation order should be reversed on the ground that the juvenile court should have used the "detriment to the child" standard in section 366.26(c)(4) and not the best interest standard under section 366.3. The appellate court stated that the best interest standard and the "detriment to the child" standard are two sides of the same coin. The appellate court also rejected the mother's argument that the visitation order should be reversed because her due process rights were violated when the juvenile court required her to file a section 388 petition to obtain increased visitation. The



appellate court held that the juvenile court had denied the mother's request not on that ground but on the ground that the offer of proof submitted by the parents was insufficient to justify increased visitation at that time. The appellate court did reverse the visitation order based on the delegation problem, and remanded to the juvenile court for further consideration of the visitation issue.

In re Tamika T. **(April 23, 2002) 97 Cal.App.4th 1114 [118 Cal.Rptr.2d 873]. Court of Appeal, Second District, Division 4.**

The juvenile court terminated a mother's parental rights under Welfare and Institutions Code section 366.26.

The court asserted its jurisdiction over a child based on a petition alleging that the mother's frequent use of heroin rendered her incapable of caring for the child. The child was declared a dependent of the court and placed with a foster parent. The mother relapsed into drug use several times and eventually left the area without leaving a forwarding address. After the mother was out of touch for three months, the court terminated reunification services, ordered the Department of Children and Family Services (DCFS) to provide permanent placement services, and set the matter for a section 366.26 hearing. The section 366.26 hearing was repeatedly continued for more than a year in order to

Continued on page 26

Dependency Case Summaries

Continued from page 25

properly notice the mother, who was still missing. The mother appeared in court two years later and requested a contested hearing. The juvenile court set the date for the hearing conditioned on an offer of proof from the mother that there was regular contact with the child and that the child would benefit from a continuing relationship. DCFS prepared a report for that meeting indicating that the child was thriving with her foster family, and recommended termination of the mother's parental rights and placement for adoption.

At the contested hearing, the mother presented evidence that she had written the child two letters and had visited the child once since her return. The juvenile court found that the mother's offer of proof was inadequate to rebut the DCFS's showing that the child was adoptable. The juvenile court terminated parental rights and found that the child was likely to be adopted. The mother appealed, arguing that she had a due process right to a contested hearing based on the applicability of the "regular visitation and contact" exception of section 366.26.

The Court of Appeal affirmed the decision of the juvenile court, determining that a trial court does not violate due process by requiring an offer of proof before conducting a contested hearing. Section 366.26(c)(1) asserts that the court will terminate parental rights unless the court finds that termination would be detrimental to the child because the parents have maintained regular visitation and contact with the child and the child would benefit from the continuing relationship. The burden is on the parent to establish probative facts to that exception. The mother argued that her due process right to present evidence at a section 366.26 hearing cannot first be put to the test of an offer of proof. The appellate court rejected this argument. Relying on *In re Jeannette V.* (1998) 68 Cal.App.4th 811, the court held that due process does not require a court to hold a contested hearing if the court is not convinced the parent will present relevant evidence on the issue he or she is contesting. The mother further argued that the language of a section 366.26 hearing established the parent's right to a contested hearing without an offer of proof. The appellate court rejected that argument, holding that the right is not absolute and can be subject to the requirement of an offer of proof. The court also rejected the mother's argument that in the absence of a contested hearing, a parent's rights are left vulnerable to arbitrary judicial decision making. The court held that a parent's rights are protected by the appeal process. The juvenile court's decision was affirmed.

In re Jesusa V. **(April 16, 2002) 97 Cal.App.4th 878 [118 Cal.Rptr.2d 683]. Court of Appeal, Second District, Division 7.**

The juvenile court declared a child a dependent under Welfare and Institutions Code section 300 and awarded presumed father status to the child's stepfather.

The Department of Children and Family Services filed a petition on the bases that (1) a mother had failed to protect a child from exposure to violence between the mother and father and (2) the father was unable to care for the child's needs due to his alcoholism. The father was in jail at the time of both the initial detention hearing, where the court placed the child with her stepfather pending the father's arraignment on the petition, and the paternity hearing to determine the stepfather's presumed father status. At the arraignment the father denied the allegations in the petition and informed the court that he too would seek presumed father status. At the preresolution conference and presumed father hearing, he again denied the allegations in the petition. The court set the matter for a contested jurisdictional hearing and continued the presumed father hearing to the date set for the jurisdictional hearing. The father, who had been transferred to a different prison, was not present for the jurisdictional and paternity hearings despite his desire to be there.

At the paternity hearing the court awarded presumed father status to the stepfather, noting that the stepfather had assumed parental rights and responsibilities for the child. On the jurisdiction issue, the court dismissed the allegations related to the father's alcoholism and allowed the department to make amendments to the remaining allegations, which were subsequently accepted by the court. The father appealed the presumed father order and the jurisdictional order, arguing that the trial court's failure to provide him an opportunity to appear and testify violated his right under Penal Code section 2625 and his due process right to a meaningful opportunity to be heard.

The Court of Appeal affirmed the order determining presumed father status but reversed the order determining jurisdiction. On the presumed father question, the appellate court rejected the father's arguments that the trial court had abused its discretion by proceeding with the hearing in his absence despite ordering his presence. Penal Code section 2625 provides that a trial court has discretion regarding whether to order the prisoner to be present at any proceeding, such as a presumed father hearing, where a prisoner's parental rights are subject to adjudication. The appellate court held that because the father was not entitled to testify, the juvenile court had not abused its discretion. Furthermore, the appellate court held that the father was not denied a "meaningful opportunity" to be heard, since he was represented by his attorney at the hearing and was given a chance to prepare a declaration in his favor. The appellate court also held that the trial court had correctly awarded presumed father status to the

Continued on page 27

Dependency Case Summaries

Continued from page 26

stepfather under Family Code section 7611. The primary purpose of section 7611 is not to establish paternity but to determine which man best comports with the "state's interest in preserving the integrity of the family and the welfare of the child." The juvenile court noted that the stepfather was married to the mother, was the father of and had custody of the child's half-brothers and half-sisters, and had developed a bond with the child.

On the jurisdictional question, the appellate court accepted the father's argument that his statutory right to be present at a jurisdictional hearing was violated. However, it rejected his due process claim because the father had been given a meaningful opportunity to be heard through witnesses and statements. Penal Code section 2625 provides that absent a waiver, a prisoner or his attorney must be present at any proceeding to determine whether a child is a dependent or whether to terminate a prisoner's parental rights. The appellate court determined that the intent of the legislation was to ensure that the prisoner would receive notice of the hearing and to grant the prisoner an absolute right to be physically present. Section 2625(d) states that if the prisoner so desires, the trial court must order temporary removal from the prison and the prisoner must be produced in court. In this case, the father did not waive his right to be present at the hearing, and the juvenile court erred by proceeding with the hearing in the father's absence. The appellate court held that the juvenile court's error was not harmless, and remanded the case to juvenile court.

***In re Raphael P. III* (April 15, 2002) 97 Cal.App.4th 716 [118 Cal.Rptr.2d 610]. Court of Appeal, Fifth District, Division 2.**

The juvenile court denied a father presumed father status on the basis of a blood test confirming he was not the biological father.

The man was in a relationship with the mother when she conceived, was listed on the birth certificate as the father, and believed he had signed a form at the hospital stating he was the baby's father. The mother lived with the man and his grandmother while she was pregnant and for the first few months of the baby's life. The father and boy stayed in contact. The father considered the boy his son, the boy called him "Daddy," and the man's extended family accepted the child as his son.

A petition was filed alleging that the child came within the provisions of Welfare and Institutions Code section 300(b) in that the mother was a dependent of the court, had given conflicting information about the whereabouts of the baby, and had left the baby alone at night. The juvenile court detained the child and approved of his placement with the man's mother. The court attempted to contact the man, but at various times had an incorrect name and address for him. He was found to have willfully failed to appear, and the petition was amended to allege that the father's ability to care for the child was unknown. A petition was filed stating that the man's mother had failed to provide adequate care for the child, had a substance abuse problem, and had an open dependency case regarding her own son. The child was detained, and the court ordered a paternity test.

The child was placed in foster care, and the foster mother expressed a desire to adopt him. The man asked if the child could be placed with him; he claimed that he had not attended any of the hearings because he had not known about them, and had known nothing of reunification efforts because he had been incarcerated. The paternity test excluded him as the baby's father. The man filed for presumed father status, and the court rejected his request. The juvenile court terminated reunification efforts and set a section 366.26 hearing. The man appealed, and the Court of Appeal affirmed the juvenile court's judgment. The man and the child (now five years old) each filed for a rehearing, and a rehearing was granted.

At the rehearing, the Court of Appeal reversed its prior decision and declared the man the presumed father under Family Code sections 7611(d) and 7571(a). Section 7611 states that a man is presumed to be the natural father of a child if he meets certain conditions, including receiving the child into his home and openly holding out the child as his natural child. The juvenile court held that the presumption of section 7611 was rebutted by the genetic test that excluded the man as the baby's father. The appellate court rejected this argument, holding that section 7611 does not authorize courts to order genetic testing of a man who meets the statutory test for presumed fatherhood. The juvenile court had erred both in ordering him to undergo genetic testing and in allowing the evidence of biological nonpaternity to rebut the man's presumed father status. The appellate court noted that a juvenile court may take biological paternity into account when there are competing claims of paternity.

Section 7571(a) states that a voluntary declaration of paternity, signed at the live birth of a child and filed by hospital staff with the Department of Child Support Services, shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support. Health and Safety Code section

Continued on page 28

Dependency Case Summaries

Continued from page 27

102425 states that if the parents are not married to each other, the father's name shall not be listed on the birth certificate unless he signs the declaration before the birth certificate is prepared. In this case the man was listed on the birth certificate, but no declaration was filed. The appellate court held that once the man provided prima facie proof that he had signed the declaration, which he did by allowing his name to appear on the birth certificate, it was the Department of Children and Family Service's (DCFS) burden to disprove the fact. The appellate court held that DCFS had not done so, and reversed the holding of the juvenile court.

In re Tanyann Nicole W. **(April 12, 2002) 97 Cal.App.4th 675 [118 Cal.Rptr.2d 596]. Court of Appeal, Fifth District.**

The juvenile court ordered reunification services for parents.

A dependent, after gaining majority, reported years of rape and other sexual abuse by her legal guardians. Juvenile authorities removed two other minors in those guardians' care—a ward for whom they were legal guardians and their biological child. The county argued that reunification services should be denied under Welfare and Institutions Code section 361.5(b)(6), which states that such services need not be provided in the case of severe sexual abuse to the child, a sibling, or a half-sibling by a parent or guardian. The juvenile court held that the statute did not apply because it does not include foster siblings. The court adjudged the children dependents under section 300 and ordered reunification services. The county appealed, arguing that the juvenile court had construed the term *sibling* too narrowly.

The Court of Appeal affirmed the judgment of the juvenile court. The county argued that the sibling relationship is legal, not biological, and siblings should be defined as children who share a legal tie to at least one common parent. In support of this argument, the county pointed to the definition of sibling used in section 362.1(c)—a child related to another person by blood, adoption, or affinity. The appellate court rejected this argument, holding that the definition used in section 362.1(c) was meant to apply only to that section, and thus the plain meaning of sibling should apply to section 361.5. Merriam-Webster's *Collegiate Dictionary* defines a sibling as "one of two or more individuals having one common parent." Because the children were not siblings under this definition, the appellate court affirmed the juvenile court's holding. The appellate court did acknowledge that the county's argument should be addressed to the Legislature.

In re Raymond E. **(April 10, 2002) 97 Cal.App.4th 613 [118 Cal.Rptr.2d 376]. Court of Appeal, Third District.**

The juvenile court terminated parental rights under Welfare and Institutions Code section 366.26.

The Department of Health and Human Services filed a section 300 petition alleging that the parents had a substance abuse problem that made them unable to care for their child. The court adjudged the minor a dependent child, ordered reunification services, and granted the parents weekly visits with the child. The child's older brother was detained at the same time and was placed separately, and the juvenile court ordered regular visits between the siblings. Initially, the parents complied with the requirements of their reunification plan, and the children expressed a desire to live with their parents.

After the father was incarcerated and the mother missed three months of visits with the child, the court terminated reunification services and ordered visitation between the siblings at least three times a month and visitation between mother and son twice monthly. The social worker first recommended against termination of parental rights. When the mother also was incarcerated, the social worker changed her mind about the adoptability of the child. The juvenile court terminated parental rights. The mother appealed, arguing that the court had committed a reversible error in terminating parental rights because a statutory exception to adoption applied, and alternatively the court had erred in finding the child adoptable because the child was a member of a bonded sibling group.

The Court of Appeal affirmed the order terminating parental rights. The mother claimed that because the child had lived with her most of his life and had expressed a desire to live with her, and because she had maintained regular contact with the child when he was out of her custody, it would be detrimental to the child to terminate her parental rights. The father made a similar claim, arguing that he had a close bond with the child. The court rejected both claims, finding that the benefit the child would gain in a permanent adoptive home outweighed the benefit for the child of continuing the relationship with his parents. The statutory exception to section 366.26 requires both a showing of regular contact and a separate showing that the child actually would benefit from continuing the relationship. Evidence of a significant attachment by itself does not suffice. The record must show such benefit to the child that termination of parental rights would be detrimental to him. The parents did not make an adequate showing.

Alternatively, the mother claimed that the juvenile court had erred in finding the child adoptable, since he was a member of a bonded sibling group. The appellate court rejected this argument because the mother had not raised the claim in the lower court. The mother claimed that the appellate court must consider the applicability of a recently enacted statutory exception to terminating parental rights: section 366.26(c)(1)(E). Under the new subdivision, the court may find a compelling reason for determining that termination of parental rights would be

Continued on page 29

Dependency Case Summaries

Continued from page 28

detrimental to the child if the termination would substantially interfere with a significant sibling relationship. The mother claimed that the Legislature had intended the exception to apply retroactively. The appellate court rejected this claim, arguing that statutes are presumed to operate prospectively and should be applied retroactively only when that is clearly intended by the Legislature. That intent was not expressed in the statute. The appellate court affirmed the juvenile court's decision to terminate parental rights.

In re Heather B. **(April 2, 2002) 98 Cal.App.4th 11 [119 Cal.Rptr.2d 59]. Court of Appeal, Fifth District.**

The juvenile court terminated the parental rights of a father under Welfare and Institutions section 366.26.

Two children were declared dependent because their mother had failed to protect them from her boyfriend, who had sexually molested the younger child, and because their father had previously physically abused the older child. Despite extensive reunification efforts, neither parent regained custody of the children, and the court selected long-term foster care as the permanent plan for the children. At a section 366.26 hearing, the court found the children adoptable and terminated parental rights. The father did not appeal this finding by the court. Subsequently, the children were removed from their adoptive placement. On the basis of this new information, the father asked the appellate court to reverse the order terminating his parental rights, contending that without a reversal there was a possibility that the children would become legal orphans.

The Court of Appeal denied the father's request, holding that there was no legal authority to support his position for reversal. Statutory law precluded the reversal. An appellate court may review the correctness of a judgment based only on the record of matters that were before the trial court. Because the father did not challenge the juvenile court's decision to terminate parental rights based on the facts as they stood at the time of the decision, but instead challenged it based on new facts, the appellate court had nothing to review. Code of Civil Procedure section 909 holds that, absent exceptional circumstances—which were not present in this case—an appellate court may not make findings of fact. Furthermore, an appellate court may make findings of facts only to affirm a lower court holding, not to reverse, as the father sought to do in this case. The appellate court also relied on statutory language in section 366.26, which provides that alteration or revocation of an order terminating parental rights may be done only by direct appeal of that order. A parent whose rights are terminated may not relitigate his or her child's adoptability based on new evidence at either the trial or the appellate level. The Court of Appeal affirmed the juvenile court's order to terminate parental rights.

In re N.S. (**March 28, 2002) 97 Cal.App.4th 167 [118 Cal.Rptr.2d 259]. Court of Appeal, Fourth District, Division 1.**

The juvenile court continued its jurisdiction over a child at a six-month review hearing.

A Welfare and Institutions Code section 300 petition alleged that a child was at risk of harm after the child's cousin was injured in the child's father's care. The juvenile court ordered that the child live with her mother and that the child's father not reside in the home. The juvenile court also ordered reunification services. At a six-month review hearing, the juvenile court allowed the father to return home without supervision but continued its jurisdiction over the child. The father appealed.

The Court of Appeal reversed the juvenile court's order continuing its jurisdiction over the child. The San Diego County Health and Human Services Agency (HHS) contended that the father had waived his right to challenge the court's order because he had submitted to HHS's recommendation to continue jurisdiction. The appellate court found no evidence that the father had submitted to the recommendation. He specifically contested the recommendation that he needed supervision when he returned home, and he did not submit to the recommendation for continuation. He did not waive his right to appeal the court's order.

The father improperly assumed that the six-month review hearing was pursuant to Welfare and Institutions Code section 366.21; it was conducted pursuant to section 364. Under section 364(c), the juvenile court must determine whether continued supervision is necessary and must terminate jurisdiction unless the social worker establishes by a preponderance of the evidence that conditions justifying jurisdiction still exist or are likely to exist if supervision is withdrawn. In the six months of court jurisdiction, there had been no evidence that the child's father had acted impulsively or had an outburst. The father was in compliance with his case plan, was cooperative with the social worker, and had complied with all court orders. He completed his parenting skills training class. He was amenable to therapy and did not miss a session. The social worker had recommended that the father be permitted to return home. The appellate court found no evidence that the conditions that caused jurisdiction of the child still existed or would exist if jurisdiction were terminated. Therefore, the juvenile court was bound by Welfare and Institutions Code section 364(c) to terminate its jurisdiction over the child. The appellate court reversed the juvenile court's order continuing its jurisdiction.

Continued on page 30

Dependency Case Summaries

Continued from page 29

***Renee J. v. Superior Court of Orange County* (March 22, 2002) 96 Cal.App.4th 1450 [118 Cal.Rptr.2d 118]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated a mother's reunification services and reset the matter for a permanency hearing.

The mother had a long history of drug use, and the juvenile court had previously terminated reunification services with her three other children. The mother was arrested for burglary and forgery. When she could not name any relatives to take care of her daughter, the child was detained by the social service agency (SSA). The juvenile court declined to order reunification services for the child in this case, pursuant to Welfare and Institutions Code section 361.5(b)(10). The court stated that subdivision (b)(10) authorized it to deny reunification services for a parent who had previously failed to reunify with another child, even without an additional finding that the parent had not "subsequently made a reasonable effort to treat the problem which led to the removal [of the prior child]." The mother appealed.

The Court of Appeal reversed the decision of the lower court, holding that in order to terminate reunification services, a juvenile court is required to find that the parent has failed to make a reasonable effort to treat the problem that led to her failure to reunify with her other children. SSA, however, argued that the court need make that finding only when a parent has had her parental rights terminated, not when she has failed to reunify with another child. The appellate court rejected that argument, interpreting the statute to require in either instance a finding that the parent has not made a reasonable effort. SSA appealed to the Supreme Court. While the case was pending before the Supreme Court, the juvenile court reinstituted reunification services and the mother met all reunification requirements. The Supreme Court subsequently rejected the Court of Appeal's interpretation of the statute, reversed its decision, and invited the Legislature to clarify the "no reasonable effort" clause. The Legislature did so with an amendment that clarified that the "no reasonable effort" clause applies to instances in which a parent has previously had his or her parental rights with a child's sibling terminated *and* to instances in which a parent has failed to reunify with a child's sibling.

The amendment was passed the day of the mother's status review hearing. The juvenile court, which was not yet aware of the amendment, did not hold the status review hearing, stating that the California Supreme Court's interpretation of the statute left the juvenile court no choice but to terminate the reunification process without conducting the review hearing. Upon learning of the amendment, the mother sought reconsideration, but the juvenile court denied that request, holding that the amendment could not be applied retroactively.

The mother sought extraordinary relief from the trial court's order terminating her reunification services with her daughter. She argued that the trial court had erred in applying the California Supreme Court's interpretation of section 361.5(b)(10), because the Legislature had almost immediately overridden that interpretation by amending the statute. The Court of Appeal agreed with the mother, arguing that the Legislature intended its amendment as a clarification (not a change in legal direction) and so it could be applied retroactively. The appellate court relied on *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, which held that where an amendment to a statute clarifies or declares existing law, "such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment." In this case, as in *Western Security*, the Legislature acted quickly to clarify an existing law at the express invitation of the Supreme Court, which declared the previous law to be ambiguous.

SSA argued that even if the Court of Appeal were to find the amendment retroactive, the trial court's error in failing to apply it was harmless because the mother had not made reasonable efforts to address her drug problem and therefore it would be "fruitless" to provide reunification services. The appellate court rejected that argument, holding that the statute allows but does not require the juvenile court to deny services when no reasonable effort has been shown. The appellate court would not anticipate how the juvenile court would have ruled had it "allowed the reunification process to reach a normal conclusion." The Court of Appeal reversed the juvenile court's termination of reunification services and remanded the case for a status review hearing.

***Kimberly R. v. San Diego County* (March 8, 2002) 96 Cal.App.4th 1067 [117 Cal.Rptr.2d 670]. Court of Appeal, Fourth District, Division 1.**

The juvenile court denied the Health and Human Services Agency's (HHS) motion to dismiss a Welfare and Institutions Code section 387 supplemental petition, and allowed the child's counsel to pursue the petition.

A three-year-old child was declared a dependent on the basis of his mother's inability to care for him because of her mental illness and alcohol abuse. The child remained in the mother's care. The court sustained a supplemental petition when the mother admitted that she could not care for her child, and the court placed the child with his paternal uncle. At the 18-month review hearing, HHS reported that the mother had made significant progress with her case plan and had had successful visits with her child. The court returned the child to his mother's custody.

Continued on page 31

Dependency Case Summaries

Continued from page 30

HHS filed a second supplemental petition when the mother first failed to pick up her son from school and then was found incoherent and moaning. The court detained the child with his paternal uncle. After further investigation with the mother's psychologist and neuropsychologist, HHS requested dismissal of the second supplemental petition, and the child's attorney objected. The juvenile court set a contested adjudication and disposition hearing. The court concluded after the hearing that the mother does everything she can to control her mental illness but that "something fishy went on" the day she failed to pick up her child from school. Although the court admitted that it would have a problem making a true finding if it were an original petition, it found the petition to be true, removed the child from his mother's custody, and terminated her services. The mother appealed.

The Court of Appeal held that the juvenile court had followed unauthorized trial procedure, the error was harmless, and the juvenile court's true finding was not supported by substantial evidence. The juvenile court was directed to vacate its order that the child be removed from his mother's custody, that reunification services be terminated, and that a permanency planning hearing be set. The mother contended that HHS should have the right to dismiss a section 387 petition after it determines that the evidence relied on is insufficient. The dismissal of the section 387 petition does not divest the juvenile court of its jurisdiction, and the child's counsel may file a section 388 modification petition if he or she believes the child should be removed from the parent.

The appellate court rejected the proposition advanced by HHS and the mother—that the party objecting to the section 387 supplemental petition must file a section 388 petition. The appellate court found that HHS should be required to show the evidence its investigation has revealed before asking for a dismissal. The juvenile court in this case should have required HHS to show cause why the supplemental petition should be dismissed. HHS contended that the error was harmless because (1) the court applied the requisite standard of clear and convincing evidence, (2) HHS's reports were admitted, and (3) its witnesses were thoroughly examined in the course of a full evidentiary hearing. The appellate court determined that the child's mother had been afforded her trial rights and that the procedural error was harmless.

The appellate court found, however, that the juvenile court had not given its reasoning why the child's physical and emotional well-being would be in substantial danger if he continued in his mother's custody. Reviewing the case on its merits, the appellate court determined that a single instance of parental tardiness in picking up the child from a supervised setting does not pose a substantial risk of harm and is not uncommon. In this case, (1) the mother is managing her mental illness through medication and psychological supervision, (2) health professionals believe the mother is committed to sobriety and can adequately parent her son, (3) the child is bonded to his mother, (4) the mother's drug test the day after the incident was negative, and (5) the social worker did not believe the mother was a specific risk to her child or was in danger of relapse. The appellate court concluded that there was no substantial evidence supporting the order to remove the child from his mother's custody.

In re Brittany K. **(February 28, 2002) 96 Cal.App.4th 805 [117 Cal.Rptr.2d 813]. Court of Appeal, First District, Division 3.**

The juvenile court terminated a parent's parental rights and denied placement of the children with their maternal grandmother. The only publishable portion of the opinion analyzed the grandmother's contention that the order terminating the mother's parental rights was void because it was made by a commissioner sitting as a referee, without prior approval from the mother and grandmother and without subsequent approval by a judge.

At the contested hearing, the juvenile court commissioner stated on the record that she had already made orders setting the contested hearing without any objection from the parties and that they had waived any contention that she not preside over the hearing. The mother's attorney stipulated to the commissioner presiding over the hearing, but the mother was not present. The grandmother's attorney stated that the grandmother refused to stipulate to the hearing heard by a commissioner. The commissioner ordered a recess to determine the mother's attendance, and when the Welfare and Institutions Code section 366.26 hearing resumed, there was no further mention of the commissioner presiding over the hearing.

The Court of Appeal determined that there were no grounds for reversal and affirmed the juvenile court's orders in their entirety. The appellate court found that the grandmother's contention—that the termination of parental rights was void because a commissioner acting as referee had heard the matter without stipulation from the parties and approval by a judge—was meritless. Code of Civil Procedure section 259 provides that every court commissioner must have the power to act as a temporary judge when qualified to do so and when appointed for that purpose, or by written consent of an appearing party. The requirement of written stipulation for a matter to be heard by a temporary judge does not apply to the selection of a court commissioner to act as a temporary judge. (Cal. Rules of Court, rule 244(a).) Under Sonoma County's local rule 12.3, a commissioner "shall act as a temporary judge with respect to any

Continued on page 32

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Volume III, no. 2

Dependency Case Summaries
Continued from page 31

and all actions, causes and proceedings" in a department in which the commissioner is assigned without further order from the court. The appellate court determined that the commissioner was acting as a temporary judge and not a referee, and could exercise all of the powers of a superior court judge. The grandmother also failed to object prior to the hearing to the commissioner's sitting as a judge. According to the appellate court, the failure to make a timely objection was "tantamount to an implied waiver of the required stipulation that the matter be heard by a commissioner sitting as a temporary judge." The orders of subordinate judicial officer sitting as a temporary judge, even without proper stipulation, become final at the expiration of the time for rehearing. The grandmother in this case failed to seek rehearing, and therefore the commissioner's decisions were final. The appellate court noted that the commissioner's failure to give express written notice of the statutory right to rehearing in a civil dependency case may be waived when a party represented by counsel fails to request a rehearing.

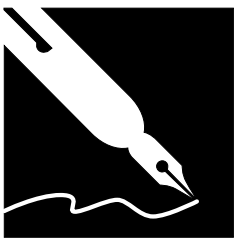
In re Maribel T. **(February 11, 2002) 96 Cal.App.4th 82 [116 Cal.Rptr.2d 631]. Court of Appeal, Second District, Division 3.**

The juvenile court imposed a custody order that prohibited a father from removing his daughter from the state of California.

A child was declared a dependent of the court based on allegations that her mother had a history of drug abuse and her father was a current user of alcohol. The child was initially placed in foster care, but a year-and-a-half later the juvenile court ordered placement in her father's home. He continued to care for her for the next year. In a report prior to a review hearing, the Department of Children and Family Services (DCFS) recommended that the father be granted sole and physical custody of his child. Although the mother had been living in Mexico and had not contacted her child, DCFS recommended that she continue to have monitored visitation.

The mother appeared at the hearing, and requested that the father not remove the child from California without prior approval. The juvenile court terminated jurisdiction and granted the father sole legal and physical custody. Although the juvenile court noted orally that the father was not permitted to move the child from the state without prior *notice* to the mother, the written custody order provided that the child could not be removed from the state without the written *consent* of the other parent or the court. The father contended that the juvenile court's order improperly restricted his removal of his daughter from the state of California.

The Court of Appeal ordered a modification to the juvenile court's custody order—deletion of the provision on written consent and substitution of a provision that directs the father not to remove his daughter from the state without prior written notice to the mother, under Family Code section 3024. This section provides that, if it is appropriate, the court may specify in an order of custody that a parent planning to change the residence of the child for more than 30 days must notify the other parent unless there is prior written agreement to the removal. The appellate court stated that the written custody order did not conform to the juvenile court's oral order and imposed removal conditions that had not been discussed at the hearing. The father had conceded that the juvenile court's oral order was a reasonable method of protecting the mother's continuing right to monitored visitation.



Summaries of Other Child-Related Cases

CASES PUBLISHED FROM FEBRUARY 11 TO JULY 23, 2002

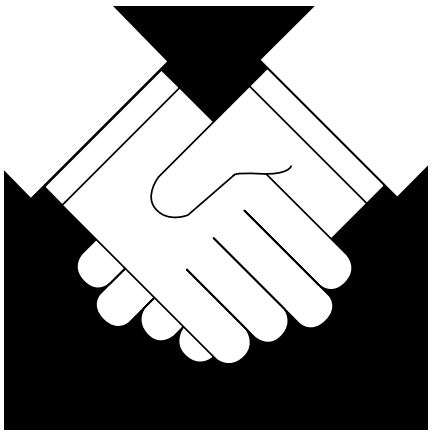
Guardianship of Melissa W. **(March 19, 2002) 96 Cal.App.4th 1293 [118 Cal.Rptr.2d 42]. Court of Appeal, Second District, Division 3.**

The trial court denied grandparents' petition for guardianship and found the child's father to be a fit parent.

A mother died and was survived by her husband and two daughters. The younger daughter was returned to her father's custody after finishing school at her maternal grandparents' home. The grandparents petitioned for guardianship of the older daughter (the child). The trial court found that the father was a fit parent, and denied the grandparents' petition. The trial court stayed the relocation order for the child to live with her father and allowed her to live with her grandparents until the end of the school year. The grandparents filed their notice of appeal.

Prior to the grandparents' deadline for returning the child to her father, the grandparents provided written consent for the child to get married. The grandparents' attorney prepared this paperwork and assisted the child in going to the Bahamas to get married. The attorney was one of the witnesses to the marriage and did not disclose to the Bahamian registrar the judgment denying the grandparents' guardianship. After the child was returned to her father, the grandparents requested an immediate stay of the judgment, pending appeal. The appellate court denied this stay; it was unaware of the child's marriage. Approximately a month after the child was returned to her father, he was notified of her marriage and moved for a dismissal of the grandparents' appeal.

The Court of Appeal granted the father's motion to dismiss the grandparents' appeal, ordered that he recover appellate costs, sanctioned the grandparents for prosecuting a frivolous appeal, and referred the matter to the State Bar. The trial court's denial of the guardianship was effective and binding on the parties. The grandparents therefore did not have the authority of



guardians to consent to the child's marriage. The grandparents' attorney had also undermined the trial court's judgment by participating in the procurement of a marriage designed to alter the child's legal status. By subverting the trial court's judgment, the grandparents and their attorney had forfeited their right to prosecute the appeal. The appellate court found that the grandparents and their attorney had participated in the sabotaging of the trial court's judgment and that these "obstructive tactics call for the exercise of this court's inherent power to impose the ultimate sanction of dismissal." The appellate court was also troubled by the attorney's failure to notify it of the marriage, although she had many communications with the court. The appellate court stated that if the marriage was valid, the grandparents' and the attorney's conduct in engineering it mooted the guardianship issue. The child's present status is that of an emancipated child. Thus, review and reversal of the judgment denying guardianship would be an idle act, because the grandparents cannot obtain any relief. The appellate court dismissed the grandparents' appeal as moot.

The appellate court heard oral argument on the father's request for monetary sanctions. An appeal should be held frivolous only (1) when it is prosecuted for an improper motive, (2) when its purpose is to harass the respondent or delay the effect of an adverse judgment, or (3) when it indisputably has no merit. In this case, the child's marriage rendered moot the grandparents' appeal from the judgment denying them guardianship, but they persisted. The appellate court directed the grandparents to pay the father $13,004—a sanction for prosecuting a frivolous appeal. The appellate court also referred the matter to the State Bar based on the "misconduct, incompetent representation, or willful misrepresentation" of the attorney. (Bus. & Prof. Code, § 6086.7(b).)